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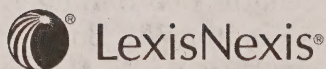
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TITLE 8

ENVIRONMENTAL LAW

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CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
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SUBCHAPTER 1 — GENERAL PROVISIONS

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- 8-1-107. Inspections — Definitions — Investigations — Inspection warrant — Exceptions — Penalties.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-1-101. Purpose.

(a) It is the purpose of this chapter to authorize the Arkansas Pollution Control and Ecology Commission to establish a system of fees for the issuance of permits required by §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314, 8-6-201 — 8-6-212, 8-6-214, and 8-9-403, to defray costs of other services provided and to authorize the Division of Environmental Quality to collect and enforce the fees.

(b) The express purpose of these fees shall be to defray the administrative costs of issuance, renewal, inspection, modification, and monitoring associated with these permits and other services provided.

History. Acts 1983, No. 817, § 1; A.S.A. 213 [repealed], 8-6-214, 8-6-215 — 8-6-217 [superseded] and substituted “the fees” for “these fees” in (a).
1947, § 82-1916; Acts 1993, No. 163, § 1; 1993, No. 165, § 1; 1995, No. 509, § 1; 1999, No. 1164, § 3; 2019, No. 693, § 1; 2019, No. 910, § 2417.

Amendments. The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Department of Environmental Quality” in (a).
by No. 693 substituted “8-6-214” for “8-6-

8-1-102. Definitions.

As used in this chapter:

(1) “Annual review fee” means that fee required by this chapter to be submitted upon the anniversary date of issuance of the permits required by the statutes enumerated in subdivision (6) of this section;

(2) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(3) [Repealed.]

(4) [Repealed.]

(5) “Facility” means any activity or operation within a specific geographic location, including property contiguous thereto. A facility may consist of several treatment, storage, or disposal operational units;

(6) “Initial fee” means the fee required by this chapter to be submitted with all applications for water, air, and solid waste permits required by §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314, 8-6-201 — 8-6-212, 8-6-214, or 8-9-403; and

(7) “Modification fee” means the fee required to be submitted by this chapter for modification of any existing or future permit required by the statutes enumerated in subdivision (6) of this section, either at the request of the permittee or as required by the laws of the State of Arkansas or the rules of the Division of Environmental Quality.

History. Acts 1983, No. 817, § 2; A.S.A. 213 [repealed], 8-6-214, 8-6-215 — 8-6-217 [superseded] and substituted “the fee” for “that fee” and substituted “8-6-214” for “8-6-213 [repealed], 8-6-214, 8-6-215 — 8-6-217 [superseded]” in (6).
1947, § 82-1917; Acts 1993, No. 163, § 2; 1993, No. 165, § 2; 1995, No. 509, § 2; 1999, No. 1164, § 4; 2019, No. 315, § 422; 2019, No. 693, § 2; 2019, No. 910, § 2418.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (7).

The 2019 amendment by No. 693 substituted “the fee” for “that fee” and substituted “8-6-214” for “8-6-213 [repealed], 8-6-214, 8-6-215 — 8-6-217 [superseded]” in (6).

The 2019 amendment by No. 910 repealed (3) and (4).

8-1-103. Powers and duties:

The Division of Environmental Quality and the Arkansas Pollution Control and Ecology Commission shall have the following powers and duties, respectively:

(1)(A) Following a public hearing and based upon a record calculating the reasonable administrative costs of evaluating and taking action on permit applications and of implementing and enforcing the terms and conditions of permits and variances, the commission shall establish, by rule, reasonable fees for initial issuance, annual review, and modification of water, air, or solid waste permits required by §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-314, 8-6-201 — 8-6-212, 8-6-214, and 8-9-403. These fees shall consist of initial fees, annual review fees, and modification fees, as defined in § 8-1-102.

(B)(i) All fees will be capped at no more than the appropriation. Provided, however, in setting reasonable permit fees, the commission shall:

(a)(1) Set water permit fees calculated to generate revenues in any fiscal year greater than three and twenty-five hundredths (3.25) times the total amount collected from water permit fees in fiscal year 1992-1993.

(2) Provided, water permit fee revenues generated through permits issued for new facilities which are permitted after July 1, 1995, shall not be subject to the overall fee cap specified for water permit fees herein;

(b)(1) Effective July 1, 2000, set water permit fees calculated to generate no revenues in any fiscal year greater than three and five-tenths (3.5) times the total amount collected from water permit fees in fiscal year 1992-1993.

(2) Provided, however, effective July 1, 2001, water permit fee revenues may be increased up to three percent (3%) per year; and

(c)(1) Set solid waste permit fees for Class I and Class III landfills calculated to generate revenues in any fiscal year that exceed four and twenty-five hundredths (4.25) times the total amount of permit fees collected from Class I and Class III solid waste landfills in fiscal year 1992-1993.

(2) Provided, that the total fee revenues cannot exceed one and twenty-five hundredths (1.25) times the total amount collected from solid waste permit fees in fiscal year 1994-1995.

(ii) Should the amount of permit fees levied on and received from permits existing prior to June 30, 1995, exceed the amounts specified in subdivision (1)(B)(i) of this section in a fiscal year, the overcollections may be retained by the division to be used to reduce permit fees in subsequent years by relative amounts.

(iii) With the exception of major underground injection control wells, fees for no-discharge state permits will be capped at five hundred dollars (\$500);

(2)(A) The rules shall provide that the fees shall be assessed on a per-facility basis for the following categories of permits:

- (i) Air;
- (ii) Water; and
- (iii) Solid waste.

(B) All annual fees for air permits issued under the state implementation plan or the rules promulgated pursuant to the Clean Air Act, 42 U.S.C. § 7401 et seq., shall be assessed in accordance with the Clean Air Act, 42 U.S.C. § 7401 et seq.

(C) The rules may include a provision for appropriate adjustments in the fees to reflect carryover fee collections in excess of the administrative costs of issuance, renewal, inspection, modification, and monitoring associated with these permits.

(D) Notwithstanding other provisions of this subchapter and other applicable laws, the commission is authorized to promulgate and the division is authorized to collect annual fees from facilities electing to operate under the terms and conditions of a pollution prevention plan in lieu of an air permit. The annual pollution prevention plan fee shall be equal to the fee otherwise applicable to facilities operating under an air permit;

(3) The division shall collect the permit fees as established by the commission and shall deny the issuance of an initial permit, a renewal permit, or a modification permit if and when any facility subject to control by the division fails or refuses to pay the fees after reasonable notice as established by the rules promulgated under this chapter;

(4) The division shall require that any fee defined in this chapter shall be paid prior to the issuance of any permit; and

(5) The division is hereby authorized to promulgate such rules necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the division in such manner as may be necessary to support the programs of the division as directed by the Governor and the General Assembly.

History. Acts 1983, No. 817, § 3; A.S.A. 1947, § 82-1918; Acts 1987, No. 629, § 1; 1991, No. 789, § 1; 1993, No. 163, § 3; 1993, No. 165, § 3; 1993, No. 1254, §§ 1, 5; 1995, No. 509, § 3; 1995, No. 1056, § 1; 1997, No. 310, § 1; 1999, No. 1052, § 1; 1999, No. 1164, § 5; 2019, No. 315, §§ 423-426; 2019, No. 693, § 3; 2019, No. 910, §§ 2419-2422.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” in (1)(A); substituted “rules” for “regulations” three times in (2), and once

in (3); and deleted “and regulations” following “rules” in (5).

The 2019 amendment by No. 693 substituted “8-6-214” for “8-6-213 [repealed], 8-6-214, 8-6-215 — 8-6-217 [superseded]” in (1)(A).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language; and substituted “division” for “department” throughout the section.

8-1-104. Existing rules.

All existing rules of the Division of Environmental Quality not inconsistent with the provisions of this chapter relating to subjects embraced within this chapter shall remain in full force and effect until expressly repealed, amended, or superseded if the rules do not conflict with the provisions of this chapter.

History. Acts 1983, No. 817, § 6; A.S.A. 1947, § 82-1921; 2019, No. 315, § 427; 2019, No. 910, § 2423.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in the section heading and twice in the section.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-1-105. Division of Environmental Quality Fee Trust Fund.

(a) A Division of Environmental Quality Fee Trust Fund is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(b) All interest earnings and fees collected under the provisions of all laws administered by the Division of Environmental Quality shall be deposited into this fund unless otherwise provided by law. The division shall use these funds to defray the costs of operating the division.

(c) The division is hereby authorized to promulgate such rules as are necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the division in such manner as may be necessary to support the programs of the division as directed by the Governor and the General Assembly.

History. Acts 1983, No. 817, § 5; A.S.A. 1947, § 82-1920; Acts 1993, No. 1254, §§ 2, 5; 1999, No. 1164, § 6; 2007, No. 1281, § 36; 2019, No. 315, § 428; 2019, No. 910, § 2424.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (c).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the section heading and throughout the section; and substituted “division” for “department” throughout the section.

8-1-106. Definitions — Disclosure statements — Denial of application — Appeal — Rules.

(a) As used in this section:

(1) “Affiliated person” means:

(A) Any officer, director, or partner of the applicant;

(B) Any person employed by the applicant in a supervisory capacity over operations of the facility that is the subject of the application that may adversely impact the environment, or with discretionary authority over such operations;

(C) Any person owning or controlling more than five percent (5%) of the applicant's debt or equity; and

(D) Any person who is not now in compliance or has a history of noncompliance with the environmental laws, rules, or regulations of this state or any other jurisdiction and who through relationship by affinity or consanguinity or through any other relationship could be reasonably expected to significantly influence the applicant in a manner that could adversely affect the environment;

(2) "Disclosure statement" means a written statement by the applicant that contains:

(A) The full name and business address of the applicant and all affiliated persons;

(B) The full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or that is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact operations within the state;

(C) A description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation;

(D) A listing and explanation of any civil or criminal legal actions by government agencies involving environmental protection laws, rules, or regulations against the applicant and affiliated persons in the ten (10) years immediately preceding the filing of the application, including administrative enforcement actions resulting in the imposition of sanctions, permit or license revocations or denials issued by any state or federal authority, actions that have resulted in a finding or a settlement of a violation, and actions that are pending;

(E) A listing of any federal environmental agency and any other environmental agency outside this state that has or has had regulatory responsibility over the applicant; and

(F) Any other information the Director of the Division of Environmental Quality may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons; and

(3) "History of noncompliance" means past operations by an applicant that clearly indicate a disregard for environmental regulation or a demonstrated pattern of prohibited conduct that could reasonably be expected to result in adverse environmental impact if a permit were issued.

(b)(1) Except as provided in subdivisions (b)(2) and (4) of this section, all applicants for the issuance or transfer of any permit, license, certification, or operational authority issued by the Division of Environmental Quality shall file a disclosure statement with their applications. Deliberate falsification or omission of relevant information from disclosure statements shall be grounds for civil or criminal enforcement action or administrative denial of a permit, license, certification, or operational authorization.

(2) The following persons or entities are not required to file a disclosure statement pursuant to this section:

(A)(i) Governmental entities, consisting only of subdivisions or agencies of the federal government, agencies of the state government, counties, municipalities, or duly authorized regional solid waste management boards as defined by § 8-6-702.

(ii) This exemption shall not extend to improvement districts or any other subdivision of government that is not specifically instituted by an act of the General Assembly; and

(B) Applicants for a general permit to be issued by the division pursuant to its authority to implement the National Pollutant Discharge Elimination System for storm water discharge or any other person or entity the Arkansas Pollution Control and Ecology Commission may by rule exempt from the submissions of a disclosure statement.

(3) Nothing in this subsection, including the exemptions in subdivision (b)(2) of this section, shall be construed as a limitation upon the authority of the director to deny a permit based upon a history of noncompliance to any applicant or for other just cause.

(4) If the applicant is a publicly held company required to file periodic reports under the Securities Exchange Act of 1934 or a wholly owned subsidiary of a publicly held company, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the United States Securities and Exchange Commission that provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other information as the director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

(5) For a person or an entity seeking a renewal of an expiring permit, license, certification, or operational authorization, the disclosure requirements of this section shall be met if the person or entity:

(A) Discloses any change in previously submitted information or verifies that the previously submitted information remains accurate; and

(B) Submits the information on forms developed by the division.

(6) The Arkansas Pollution Control and Ecology Commission may adopt rules exempting certain permits, licenses, certifications, or operational authorizations from the disclosure requirements and establish reasonable and appropriate disclosure information, if any, required for specific types of permits, licenses, certifications, or operational authorizations based on:

(A) The scope of a permit, license, certification, or operational authorization; and

(B) The person or entity that would receive a permit, license, certification, or operational authorization.

(c) The director may deny the issuance or transfer of any permit, license, certification, or operational authority if he or she finds, based upon the disclosure statement and other investigation which he or she deems appropriate, that:

(1) The applicant has a history of noncompliance with the environmental laws, rules, or regulations of this state or any other jurisdiction;

(2) An applicant that owns or operates other facilities in the state is not in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, the environmental laws or rules of this state; or

(3) A person with a history of noncompliance with the environmental laws, rules, or regulations of this state or any other jurisdiction is affiliated with the applicant to the extent of being capable of significantly influencing the practices or operations of the applicant that could have an impact upon the environment.

(d) In reaching any decision pursuant to the requirements of this section, the director shall consider:

(1) The potential danger to the environment and public health and safety if the applicant's proposed activity is not conducted in a competent and responsible manner;

(2) The degree to which past and present activities in this state and other jurisdictions directly bear upon the reliability, competence, and responsibility of the applicant; and

(3) Any evidence of rehabilitation following past violations or convictions.

(e) Any person or legal entity aggrieved by a decision of the director under this section may appeal to the Arkansas Pollution Control and Ecology Commission through administrative procedures adopted by the Arkansas Pollution Control and Ecology Commission.

(f) The Arkansas Pollution Control and Ecology Commission shall adopt rules necessary to implement this section.

History. Acts 1991, No. 454, § 1; 1993, No. 163, § 4; 1993, No. 165, § 4; 1993, No. 1052, § 1; 1995, No. 384, § 1; 1999, No. 1164, § 7; 2007, No. 1005, § 1; 2007, No. 1019, §§ 1, 2; 2009, No. 1199, §§ 1, 2; 2011, No. 222, § 1; 2019, No. 315, §§ 429-433; 2019, No. 910, §§ 2425-2428.

Amendments. The 2019 amendment by No. 315 inserted "rules" in (a)(1)(D),

(a)(2)(D), and throughout (c); and substituted "rules" for "regulations" in the introductory language of (b)(6), (c)(2), and (f).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(2)(F) and (b)(1); and substituted "division" for "department" in (b)(2)(B) and (b)(5)(B).

8-1-107. Inspections — Definitions — Investigations — Inspection warrant — Exceptions — Penalties.

(a) **GENERAL.** Whenever it shall be necessary for the purpose of implementing or monitoring the enforcement of any law charged to the authority of the Division of Environmental Quality, any authorized employee or agent of the division may enter upon any public or private property for the purpose of obtaining information or conducting investigations or inspections, subject to the following provisions.

(b) **DEFINITIONS.** As used in this section, the following terms shall have these ascribed meanings:

(1) "Administrative inspections" means investigation by division personnel at facilities operating within the division's apparent regulatory jurisdiction;

(2) "Facility" means the public or private area, premises, curtilage, building, or conveyance described as the subject of administrative inspection;

(3) "Pervasively regulated facility or activity" means the activity or facility that is the location of activity authorized by the division through a permit, license, certification, or operational status approval; and

(4)(A) "Probable cause" means showing that an administrative search limited in scope is necessary to ensure compliance with or enforcement of laws, rules, federal regulations, or orders charged to the division for implementation.

(B) For the purpose of conducting administrative inspections or applying for administrative warrants, probable cause may be provided to the division through complaints or other means that reasonably justify a limited and controlled administrative inspection.

(c) ADMINISTRATIVE INSPECTIONS.

(1)(A) Whenever the division obtains information that supports reasonable cause to believe that a violation of any law within its regulatory authority is being or has been violated, or that unauthorized regulated conduct is occurring or has occurred, division personnel or its agents may demand entry onto any property, public or private, to inspect any facility.

(B) The division's investigation or inspection shall be limited to that necessary to confirm or deny the cause which prompted the investigation or inspection, and shall be conducted during daylight, during regular business hours, or, under emergency or extraordinary circumstances, at a time necessary to observe the suspected violation or unauthorized conduct.

(C) Except under emergency circumstances, the division shall inform such facility's owner or agent of all information which forms the basis of its probable cause at the time of the inspection.

(2) Nothing in this subsection shall be construed as requiring the division to forfeit the element of surprise in its inspection efforts.

(3) Also, nothing in this section shall be construed as limiting the frequency of the periodic or random inspections of pervasively regulated facilities or activities.

(4) For the purpose of this section, a rebuttable presumption concerning the jurisdiction of the division's regulatory authority is established as it regards the division's authority to inspect any facility.

(d) ADMINISTRATIVE INSPECTION WARRANTS. If consent to inspect is denied, the division may obtain an administrative inspection warrant from a judicial officer. Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judicial officer otherwise authorized to issue search warrants within his or her jurisdiction may, upon proper oath or affirmation showing probable cause as defined by this section, issue administrative

inspection warrants for the purpose of conducting administrative inspections authorized by any law, rule, or federal regulation administered by the division;

(2) An administrative inspection warrant shall issue only upon an affidavit of a division official, employee, or agent having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the administrative inspection warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he or she shall issue an administrative inspection warrant identifying the facility to be inspected, and the purpose of the inspection. The administrative inspection warrant shall:

(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support of the administrative inspection;

(B) Be directed to a division officer or employee;

(C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified;

(D) Specifically identify any documents or samples to be gathered during the administrative inspection;

(E) Direct that it be served during normal business hours unless emergency or extraordinary circumstances compel otherwise; and

(F) Designate the judge or magistrate to whom it shall be returned;

(3) If appropriate, the administrative inspection warrant may authorize the review and copying of documents which may be relevant to the purpose of the administrative inspection. If documents must be seized for the purpose of copying, the person serving the administrative inspection warrant shall prepare an inventory of documents taken. The inventory shall be made in the presence of the person executing the administrative inspection warrant and of the person from whose possession or facility the documents were taken, if present, or in the presence of at least one (1) credible person other than the person executing the administrative inspection warrant. A copy of the inventory shall be delivered to the person from whom or from whose facility the documents were taken. The seized documents shall be copied as soon as feasible under circumstances preserving their authenticity, then returned to the person from whom the documents were taken;

(4) The administrative inspection warrant may authorize the taking of samples of materials generated, stored, or treated at the facility, or of the water, air, or soils within the facility's control or that may have been affected by the facility's operations. The person executing the administrative inspection warrant shall prepare an inventory of all samples taken. In any inspection conducted pursuant to an administrative inspection warrant in which the samples are taken, the division shall make split samples available to the person whose facility is being inspected;

(5) An administrative inspection warrant issued pursuant to this section must be executed and returned within ten (10) days of its date

unless, upon a showing of a need for additional time, the court orders otherwise. The return of the administrative inspection warrant shall be made promptly, accompanied by a written inventory of any documents or samples taken;

(6) The judge or magistrate who has issued an administrative inspection warrant shall attach to the administrative inspection warrant a copy of the return and all papers returnable in connection with the administrative inspection warrant and file them with the clerk of the circuit court for the judicial district in which the administrative inspection was made;

(7) This subsection does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with duly adopted administrative procedures; and

(8) A copy of the administrative inspection warrant and all supporting affidavits shall be provided to the person served, or left at the entry of the facility inspected.

(e) ADMINISTRATIVE INSPECTION WARRANTS — EXCEPTIONS.

Notwithstanding subsection (d) of this section, an administrative inspection warrant shall not be required for any inspection, including the review and copying of documents and taking of samples, under the following circumstances:

(1) For pervasively regulated facilities or activities as defined by this section whose permit, license, certification, or operational approval from the division provides notice that the division may inspect regulated activities to assure compliance. If the division has reason to believe that a violation of any law has or is occurring, the basis for such belief shall be communicated at the time of the inspection;

(2) If the owner, operator, or agent in charge of the facility consents;

(3) In situations presenting imminent danger to public health and safety or the environment;

(4) In situations involving inspection of conveyances, if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain an administrative inspection warrant;

(5) In any other exception or emergency circumstance when time or opportunity to apply for an administrative inspection warrant is lacking;

(6) In situations involving conditions that may be observed in an open field, from an area practically open to public access, or in plain view; or

(7) In all other situations in which an administrative inspection warrant is not constitutionally required.

(f) PENALTIES. Any knowing refusal of right of entry and inspection to division personnel as set out in this section is a violation subject to a fine of up to twenty-five thousand dollars (\$25,000) or civil penalties up to twenty-five thousand dollars (\$25,000).

History. Acts 1991, No. 1076, § 2; § 4; 2019, No. 807, § 1; 2019, No. 910, 2019, No. 315, §§ 434, 435; 2019, No. 693, § 2429.

Amendments. The 2019 amendment by No. 315 inserted “rules, federal” in (b)(4)(A); and substituted “law, rule, or federal regulation” for “law or regulation” in (d)(1).

The 2019 amendment by No. 693 inserted “administrative inspection” throughout (d) and (e); substituted “subsection (d) of this section, an administrative inspection” for “the previous subsection an administrative” in the introductory language of (e); and made stylistic changes.

The 2019 amendment by No. 807, in (f), substituted “knowing” for “willful and unjustified”, and substituted “is a violation” for “shall constitute a misdemeanor”.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” throughout the section.

SUBCHAPTER 2 — POWERS OF THE DIVISION AND COMMISSION

SECTION.

- 8-1-201. Legislative intent.
- 8-1-202. Powers of the Director of the Division of Environmental Quality.
- 8-1-203. Powers and responsibilities of the Arkansas Pollution

SECTION.

- Control and Ecology Commission.
- 8-1-204. Administrative law judge.
- 8-1-206. Voluntary environmental stewardship program — Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-1-201. Legislative intent.

(a) The General Assembly recognizes that since 1949, when the precursor of the Arkansas Pollution Control and Ecology Commission was first created, significant changes have occurred in the responsibilities charged to the state’s environmental agency. This subchapter intends to clarify and supersede prior law that does not comport with this delineation of responsibility between the Division of Environmental Quality and the commission.

(b) Further, in delineating the responsibility between the division and the commission, it is the intent of the General Assembly neither to expand nor to diminish any rights of property owners of this state under Arkansas Constitution, Article 2, § 22.

History. Acts 1991, No. 1230, § 1; substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (b). 1993, No. 163, § 5; 1993, No. 165, § 5; 1997, No. 1219, § 4; 2019, No. 910, § 2430.

Amendments. The 2019 amendment

8-1-202. Powers of the Director of the Division of Environmental Quality.

(a) The Director of the Division of Environmental Quality shall be the executive officer and active administrator of all pollution control activities in the state.

(b) As such, the director’s duties shall include:

(1)(A) The administration of permitting, licensing, certification, and grants programs deemed necessary to protect the environmental integrity of the state.

(B) The director, or his or her delegatee within his or her staff, shall serve as the issuing authority for the state;

(2)(A) Initiation and settlement of civil or administrative enforcement actions to compel compliance with laws, orders, rules, and federal regulations charged to the responsibility of the Division of Environmental Quality.

(B) In this regard, the director may propose the assessment of civil penalties as provided by law and take all actions necessary to collect such penalties;

(3) Issuance of orders in such circumstances that reasonably require emergency measures to be taken to protect the environment or the public health and safety, except to the extent that the matter involved is reserved to the jurisdiction or orders of the Arkansas Pollution Control and Ecology Commission for rulemaking procedures in § 8-4-202;

(4) Day-to-day administration of all activities that the Division of Environmental Quality is empowered by law to perform, including, but not limited to, the employment and supervision of such technical, legal, and administrative staff, within approved appropriations and with the approval of the Secretary of the Department of Energy and Environment, as is necessary to carry out the responsibilities vested with the Division of Environmental Quality;

(5) Providing technical and legal expertise and assistance in the field of environmental protection to other agencies and subdivisions of the state as appropriate;

(6) Day-to-day administration of environmental programs delegated to the State of Arkansas by the responsible agencies of the United States Government;

(7) The supervision of the Arkansas Energy Office of the Division of Environmental Quality under the Arkansas Energy Reorganization and Policy Act of 1981, § 15-10-201 et seq.;

(8) Any other power or duty specifically vested with the director or the Division of Environmental Quality by the General Assembly or the secretary; and

(9) The supervision of the Division of Environmental Preservation or the successor division, office, or unit responsible for reviewing and making specific ecologically oriented recommendations on all plans, programs, and projects of all other state departments, divisions, agencies, and commissions and on all federal plans, programs, and projects affecting this state.

History. Acts 1991, No. 1230, § 1; 1993, No. 163, § 6; 1993, No. 165, § 6; 1999, No. 1164, § 8; 2017, No. 271, § 2; 2019, No. 315, § 436; 2019, No. 910, § 2431.

Amendments. The 2019 amendment by No. 315 inserted “rules” and “federal” in (b)(2)(B)(i).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the section heading; deleted (a); and rewrote the remaining provisions.

8-1-203. Powers and responsibilities of the Arkansas Pollution Control and Ecology Commission.

(a) The Arkansas Pollution Control and Ecology Commission shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern.

(b) The commission’s powers and duties shall be as follows:

(1)(A) Promulgation of rules implementing the substantive statutes charged to the Division of Environmental Quality for administration.

(B) In promulgation of such rules, prior to the submittal to public comment and review of any rule or change to any rule that is more stringent than the federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule on the people of the State of Arkansas, including those entities that will be subject to the rule.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission’s rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent rule;

(2) Promulgation of rules and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules governing administrative procedures for challenging or contesting division actions;

(4) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Division of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the division. However, the director shall always remain within the plenary authority of the Governor; and

(8) Upon a majority vote, initiate review of any director's decision.

(c)(1)(A) In providing for adjudicatory review as contemplated by subdivisions (b)(4) and (5) of this section, the commission may appoint one (1) or more administrative law judges.

(B) An administrative law judge shall at all times serve as an agent of the commission.

(2) In hearings upon appeals of permitting or grants decisions by the director or contested administrative enforcement or emergency actions initiated by the director, the administrative law judge shall administer the hearing in accordance with procedures adopted by the commission and, after due deliberation, submit his or her recommended decision to the commission.

(3)(A)(i) Commission review of any appealed or contested matter shall be upon the record compiled by the administrative law judge and his or her recommended decision.

(ii) Commission review shall be de novo. However, no additional evidence need be received unless the commission so decides in accordance with established administrative procedures.

(B) The commission may afford the opportunity for oral argument to all parties of the adjudicatory hearing.

(C)(i) By the majority vote of a quorum, the commission may affirm, reverse and dismiss, or reverse and remand to the director.

(ii) If the commission votes to affirm or reverse, such decision shall constitute final agency action for purposes of appeal.

(4) Any party aggrieved by the commission decision may appeal as provided by applicable law.

(d) The Chair of the Arkansas Pollution Control and Ecology Commission may appoint one (1) or more committees composed of commission members to act in an advisory capacity to the full commission.

History. Acts 1991, No. 1230, § 1; 1993, No. 163, § 7; 1993, No. 165, § 7; 1993, No. 1264, § 2; 1995, No. 117, § 1; 2015, No. 838, §§ 1, 2; 2019, No. 315, §§ 437-439; 2019, No. 910, §§ 2432-2434.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" and made similar changes throughout the section; and substituted

"rule" for "regulation" at the end of (b)(1)(B) and (b)(1)(E).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b)(1)(A) and (b)(4); and substituted "division" for "department" in (b)(7).

8-1-204. Administrative law judge.

(a) The Arkansas Pollution Control and Ecology Commission shall employ a full-time administrative law judge to perform functions and duties that the commission shall direct and, in particular, to advise the commission on matters of law and procedure that may arise during the conduct of commission duties and responsibilities as outlined in §§ 8-1-203, 8-4-201, 8-4-202, 8-4-311, 8-5-205, and 8-6-207, or as otherwise provided by law.

(b) The administrative law judge shall be selected and hired by the commission and shall be independent of and not an employee of the Division of Environmental Quality.

(c) The expenses of the administrative law judge shall be paid from the Division of Environmental Quality Fee Trust Fund or from other sources as provided by law.

(d) The office space for the administrative law judge shall be at a location other than the offices of the division.

(e) An administrative assistant II shall be supervised by and provide assistance to the administrative law judge authorized in this section.

(f) The disbursing officer of the division shall disburse the funds appropriated for the commission's administrative law judge.

History. Acts 1995, No. 1191, § 36; 1999, No. 1164, § 9; 2003, No. 51, § 1; 2015, No. 838, § 3; 2019, No. 910, § 2435.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (b) and (c); and substituted "division" for "department" in (d) and (f).

8-1-206. Voluntary environmental stewardship program — Definitions.

(a) As used in this section:

(1) "Environmental laws" means this title and any rules, permits, and orders adopted or issued under this title;

(2) "Environmental management system" means a set of documented processes and practices that enable an organization to reduce its environmental impact and increase operating efficiency by continuously improving its environmental performance;

(3) "Environmental performance" means the effect of a facility or activity on air, water, land, natural resources, or human health and the generation of waste by a facility or activity; and

(4)(A)(i) "Organization" means a company, corporation, political subdivision, firm, enterprise, or institution, or any part or combination, whether incorporated or not, public or private, that has its own functions and administration.

(ii) For an organization with more than one (1) operating unit, a single operating unit may be treated as an organization.

(B) "Organization" includes persons or entities regulated by the Division of Environmental Quality and those not regulated by the division.

(b)(1) The Director of the Division of Environmental Quality may develop, implement, and administer a voluntary environmental stewardship program.

(2) The voluntary environmental stewardship program shall provide recognition for those organizations that have a history of sustained compliance with environmental law requirements or organizations that go above and beyond environmental law requirements.

(3) At the discretion of the director, the voluntary environmental stewardship program shall provide incentives for organizations that demonstrate sustained compliance with environmental laws or go above and beyond environmental law requirements to include without limitation:

(A) Reduced inspection frequency;

(B) Reduced reporting requirements; or

(C) Advanced notification of inspections and enforcement rulings.

(4) The voluntary environmental stewardship program shall include tiers commensurate with and appropriate to the environmental impacts of an organization's facilities, activities, products, or services, and be based on an organization's level of commitment to the voluntary environmental stewardship program.

(c)(1) Participation in the voluntary environmental stewardship program by any organization is voluntary.

(2) The division shall approve an organization's membership in the voluntary environmental stewardship program and shall review the organization's membership at least one (1) time every three (3) years.

(3) Membership and tier level assignment shall be based on the organization's commitment to:

(A) Sustained compliance with environmental laws and history of compliance with environmental laws;

(B) Develop, implement, and maintain an environmental management system;

(C) Going above and beyond the requirements of environmental laws;

(D) Pollution prevention and improving its environmental performance; and

(E) Reporting to the division on its environmental performance annually.

(d)(1) Membership in the voluntary environmental stewardship program is not a license or permit under this title.

(2) The denial or approval of membership is not an appealable action or an action against the organization under this title.

(e) This section does not permit the violation of state or federal laws.

History. Acts 2017, No. 858, § 1; 2019, substituted "rules" for "regulations" in No. 315, § 440. (a)(1).

Amendments. The 2019 amendment

SUBCHAPTER 3 — ENVIRONMENTAL AUDIT REPORTS

SECTION.

8-1-302. Definitions.

8-1-305. Exceptions.

SECTION.

8-1-307. Disclosure in civil or administrative proceeding.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-1-302. Definitions.

As used in this subchapter:

(1) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(2) [Repealed.]

(3)(A) “Environmental audit” means a voluntary, internal, and comprehensive evaluation of one (1) or more facilities or an activity at one (1) or more facilities regulated under this chapter, or federal, regional, or local counterparts or extensions thereof, or of management systems related to that facility or activity, that is designed to identify and prevent noncompliance and to improve compliance with statutory or regulatory requirements.

(B) An environmental audit may be conducted by the owner or operator, by the owner’s or operator’s employees, or by independent contractors; and

(4) “Environmental audit report” means a set of documents prepared as a result of an environmental audit, and labeled “ENVIRONMENTAL AUDIT REPORT: PRIVILEGED DOCUMENT”, that may include:

(A) Field notes, records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, and surveys collected or developed for the primary purpose of preparing an environmental audit;

(B) An audit report prepared by the auditor that includes:

(i) The scope of the audit;

(ii) The information gained in the audit;

(iii) Conclusions and recommendations; and

(iv) Exhibits and appendices;

(C) Memoranda and documents analyzing a portion of or all of the audit report and discussing implementation issues; and

(D) An implementation plan that addresses correcting past compliance, improving current compliance, and preventing future non-compliance.

History. Acts 1995, No. 350, § 1; 1999, No. 1164, § 11; 2019, No. 910, § 2436.

Amendments. The 2019 amendment repealed (2).

8-1-305. Exceptions.

The privilege described in § 8-1-303 does not apply to the following:

(1) Documents, communications, data, reports, or other information that must be collected, developed, maintained, reported, or otherwise made available to the public or a regulatory agency under:

(A) Federal or state law or extensions thereof;

(B) A rule or standard adopted by the Arkansas Pollution Control and Ecology Commission;

(C) A determination, a permit, or an order made or issued by the commission or the Director of the Division of Environmental Quality; or

(D) Any other federal, state, or local law, permit, or order;

(2) Information obtained by observation, sampling, or monitoring by any regulatory agency; and

(3) Information obtained from a source independent of the environmental audit.

History. Acts 1995, No. 350, § 1; 1999, No. 871, § 2; 2019, No. 910, § 2437.

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (1)(C).

Amendments. The 2019 amendment

8-1-307. Disclosure in civil or administrative proceeding.

(a) In a civil or administrative proceeding, a court of record or administrative tribunal, after an in-camera review, shall require disclosure of material for which the privilege described in § 8-1-303 is asserted if the court or administrative tribunal determines one (1) of the following:

(1) The privilege is asserted for a fraudulent purpose;

(2) The material is not subject to the privilege;

(3) The material is subject to the privilege and the material shows evidence of noncompliance with:

(A) Federal or state law or extensions of such statutes;

(B) Any rule adopted by the Arkansas Pollution Control and Ecology Commission; or

(C) A determination, permit, or order issued by the commission or the Director of the Division of Environmental Quality; and

(4) The person claiming the privilege did not promptly initiate and pursue appropriate efforts to achieve compliance with reasonable diligence.

(b)(1) If the noncompliance described in subdivision (a)(3) of this section constitutes a failure to obtain a required permit, the person is deemed to have made appropriate efforts to achieve compliance if the person filed an application for the required permit not later than ninety (90) days after the date the person became aware of the noncompliance.

(2)(A) In the event additional time is required to prepare a permit application, the person shall, within ninety (90) days, submit a schedule to the Division of Environmental Quality that identifies the activities required to complete the application, and, if the schedule is acceptable to the division, the filing of the application pursuant to the submitted schedule shall constitute reasonable diligence to achieve compliance for a failure to obtain a required permit.

(B) Nothing in this section authorizes a facility to operate without the proper permit having been issued.

History. Acts 1995, No. 350, § 1; 1999, No. 871, § 3; 1999, No. 1164, § 12; 2019, No. 315, § 441; 2019, No. 910, §§ 2438, 2439.

Amendments. The 2019 amendment by No. 315 deleted “or regulation” following “rule” in (a)(3)(B).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(3)(C) and (b)(2)(A); and substituted “division” for “department” in (b)(2)(A).

CHAPTER 2
ENVIRONMENTAL TESTING

SUBCHAPTER.

2. ENVIRONMENTAL LABORATORY ACCREDITATION PROGRAM ACT.

SUBCHAPTER 2 — ENVIRONMENTAL LABORATORY ACCREDITATION PROGRAM
ACT

SECTION.

8-2-202. Purpose.

8-2-203. Definitions.

8-2-204. Powers and duties of division and commission.

8-2-205. Procedure for issuance of rules, appeals, hearings, etc.

SECTION.

8-2-206. Accreditation — Criteria and procedure.

8-2-207. Accreditation — Duration — Renewal.

8-2-208. Accreditation — Revocation.

8-2-209. Fees.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two

uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through

6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-2-202. Purpose.

This subchapter authorizes the Division of Environmental Quality to establish and administer an environmental laboratory accreditation program so that laboratories that submit data and analyses to the division may be accredited by the division as having demonstrated acceptable compliance with laboratory standards so that the validity of scientific data submitted to the division may be further assured.

History. Acts 1985, No. 876, § 2; A.S.A. 1947, § 82-1993.1; Acts 1993, No. 322, § 1; 1993, No. 440, § 1; 1999, No. 1164, § 14; 2017, No. 244, § 1; 2019, No. 910, § 2440.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” and “division” for “department” three times.

8-2-203. Definitions.

As used in this subchapter:

(1) “Acceptable results” means results within limits determined on the basis of statistical procedures as prescribed by the Division of Environmental Quality;

(2) “Accreditation” means the process by which the division recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory;

(3) “Analyte” means the characteristics of a laboratory sample determined by an analytical laboratory testing procedure;

(4) “Certificate” means a document issued by the division showing the analytes for which a laboratory has received accreditation;

(5)(A) “Consulting laboratory” means a laboratory that performs analyses for any person other than itself.

(B) “Consulting laboratory” does not include a laboratory that is wholly owned by the person for whom the analyses are performed;

(6) “Evaluation” means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, and analytical techniques of a laboratory for measuring or establishing specific analytes;

(7)(A) “Laboratory” means any facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, or soil or subsoil materials or that performs any other analyses related to environmental quality evaluations required by the division or which will be submitted to the division.

(B) “Laboratory” does not include evaluations to determine the engineering properties related to soil mechanics;

(8)(A) “Matrix” means the components of a sample other than the one (1) or more analyte of interest.

- (B) “Matrix” includes without limitation nonpotable water, soil, or oil;
- (9) “Method” means procedures and techniques for performing an activity systematically presented in the order in which the procedures and techniques are to be executed;
- (10) “Person” means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, municipal, state, or federal government or agency, or any other legal entity, however organized; and
- (11) “Proficiency test sample” means a sample of composition that is unknown to the laboratory and is provided to test whether the laboratory can produce analytical results within the specified acceptance criteria.

History. Acts 1985, No. 876, § 3; A.S.A. 1947, § 82-1993.2; Acts 1993, No. 322, § 2; 1993, No. 440, § 2; 1999, No. 1164, § 15; 2017, No. 244, § 1; 2019, No. 910, §§ 2441-2443.

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (1); and substituted “division” for “department” throughout the section.

Amendments. The 2019 amendment

8-2-204. Powers and duties of division and commission.

- (a) The Division of Environmental Quality shall have the following powers and duties under this subchapter:
- (1) To establish and administer the Environmental Laboratory Accreditation Program for laboratories applying for accreditation by the division;
- (2) To enforce the provisions of this subchapter and all laws, rules, and federal regulations relating to the program and to environmental testing;
- (3) To issue, deny, revoke, or suspend the accreditation of a laboratory for cause; and
- (4) To refuse to accept analytical results from a laboratory when the division reasonably determines that the results do not meet reasonable criteria for validation, regardless of whether the laboratory is accredited.
- (b) The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties under this subchapter:
- (1) To establish by rule reasonable fees for the accreditation procedures under this subchapter and to cover the expenses of administering the program; and
- (2) To promulgate necessary rules to effect the purpose and administration of the program, including without limitation, provisions governing accreditation, modification, and renewal of accreditation and reaccreditation after revocation.

History. Acts 1985, No. 876, § 4; A.S.A. 1947, § 82-1993.3; Acts 1993, No. 322, § 3; 1993, No. 440, § 3; 2017, No. 244,

§ 1; 2019, No. 315, §§ 442, 443; 2019, No. 910, § 2444.

Amendments. The 2019 amendment

by No. 315 inserted “federal” in (a)(2); substituted “rule” for “regulation” in (b)(1); and substituted “rules” for “regulations” in (b)(2).

The 2019 amendment by No. 910 substituted “Division of Environmental Qual-

ity” for “Arkansas Department of Environmental Quality” in the introductory language of (a); and substituted “division” for “department” in (a)(1) and (a)(4).

8-2-205. Procedure for issuance of rules, appeals, hearings, etc.

(a) Any person that violates any provision of this subchapter or of any rule or order issued pursuant to this subchapter or that commits an unlawful act under this subchapter shall be subject to the same penalty and enforcement provisions as are contained in the Arkansas Water Air Pollution Control Act, § 8-4-101 et seq.

(b) Except as otherwise provided in this subchapter, the procedure of the Arkansas Pollution Control and Ecology Commission for issuance of any rules, conduct of hearings, notice, review of actions on certificates, right of appeal, presumptions, finality of actions, and related matters shall be as provided in Part I of the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, including without limitation, §§ 8-4-202, 8-4-205 — 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

History. Acts 1985, No. 876, § 8; A.S.A. 1947, § 82-1993.7; Acts 1993, No. 322, § 4; 1993, No. 440, § 4; 2019, No. 315, § 444.

deleted “or regulations” following “rules” in the section heading; deleted “regulation” following “rule” in (a); and deleted “and regulations” following “rules” in (b).

Amendments. The 2019 amendment

8-2-206. Accreditation — Criteria and procedure.

(a)(1)(A)(i) All consulting laboratories performing analyses for which results are to be submitted to the Division of Environmental Quality shall obtain a laboratory accreditation under this subchapter.

(ii) An analyte, method, or matrix for which the Environmental Laboratory Accreditation Program does not provide accreditation shall be evaluated by the division for acceptance.

(B) The division, in its sole discretion, may refuse to accept results of analyses performed by a consulting laboratory that does not hold a laboratory accreditation under the program for the reason that the laboratory is not accredited.

(2) Accreditation for laboratories other than consulting laboratories shall not be mandatory.

(b) Applications for accreditation shall be made in the form and manner established by the division.

(c) Upon receipt of an application for accreditation, the division shall evaluate and act upon the application in accordance with the following procedures and criteria:

(1)(A) The laboratory must successfully complete an evaluation.

(B) The division shall establish evaluation criteria on proper analytical techniques, quality assurance, recordkeeping, and report-

ing methods and procedures and facilities, equipment, and personnel requirements; and

(2) The laboratory must submit to the division acceptable results from its analysis of proficiency test samples for the specific analytes, methods, and matrices selected for accreditation.

(d) Upon completion of the laboratory evaluation and the review of the proficiency test sample results, the division shall notify the laboratory of its determination to award or deny accreditation.

(e)(1) If the adequacy of the laboratory's capability and its record-keeping have been sufficiently established to the satisfaction of the division, a certificate will be issued to the laboratory for the evaluated categories of analytes, methods, and matrices.

(2) If accreditation is denied, the division shall set forth, in writing, the reasons for denial.

History. Acts 1985, No. 876, § 5; A.S.A. 1947, § 82-1993.4; Acts 1993, No. 322, § 5; 1993, No. 440, § 5; 2017, No. 244, § 2; 2019, No. 910, § 2445.

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(1)(A)(i); and substituted "division" for "department" throughout the section.

Amendments. The 2019 amendment

8-2-207. Accreditation — Duration — Renewal.

(a) A certificate of accreditation shall be effective for a period of one (1) year from the date of issuance, after which time the accreditation will lapse.

(b) Accreditation may be renewed for additional periods of one (1) year's duration upon application for renewal made to the Division of Environmental Quality.

History. Acts 1985, No. 876, § 5; A.S.A. 1947, § 82-1993.4; Acts 2017, No. 244, § 2; 2019, No. 910, § 2446.

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b).

Amendments. The 2019 amendment

8-2-208. Accreditation — Revocation.

(a) After a laboratory is accredited, the laboratory's accreditation may be revoked or suspended by the Division of Environmental Quality for:

(1) Knowingly falsifying any data submitted to the division or any data related to laboratory analysis;

(2) Knowingly making any false statement, representation, or certification in any application, record, report, plan, or other document issued by or sent to the division or related to laboratory analysis;

(3) Knowingly misrepresenting procedures or documentation used in sampling or laboratory analysis;

(4) Failing to comply with any one (1) or more of the following requirements under which the accreditation was issued:

(A) Methods or procedures pertaining to analytical techniques, quality assurance, recordkeeping, or reporting methods; or

(B) Facility, equipment, or personnel requirements; or

(5) Failing to achieve acceptable results for specific analytes, methods, or matrices for which it has been accredited.

(b) It shall be unlawful for any person:

(1) To knowingly falsify any data submitted to the division or any data related to laboratory analysis;

(2) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document issued by or sent to the division or related to laboratory analysis;

(3) To knowingly misrepresent sampling procedures or methods used in laboratory analysis;

(4) To knowingly render inaccurate any accreditation issued under this subchapter; or

(5) To knowingly represent that a person is accredited when that person is not accredited.

History. Acts 1985, No. 876, § 6; A.S.A. 1947, § 82-1993.5; Acts 1993, No. 322, § 6; 1993, No. 440, § 6; 2017, No. 244, § 2; 2019, No. 910, §§ 2447, 2448.

Amendments. The 2019 amendment

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a); and substituted “division” for “department” in (b)(1) and (b)(2).

8-2-209. Fees.

(a)(1) The Division of Environmental Quality may assess and collect reasonable fees from participating laboratories for the administrative costs of the Environmental Laboratory Accreditation Program.

(2) The costs shall include without limitation, the expense of conducting evaluations.

(b) Fees may be assessed at the time of initial application, renewal application, application for modification, or at the time a certificate is awarded.

(c) Following a public hearing and based upon a record calculating the reasonable administrative costs of conducting accreditation procedures under this subchapter and costs of enforcing the terms and conditions of accreditations, the Arkansas Pollution Control and Ecology Commission may establish reasonable fees for initial issuance, annual review, and modification of accreditations authorized by this subchapter.

History. Acts 1985, No. 876, § 7; A.S.A. 1947, § 82-1993.6; Acts 1993, No. 322, § 7; 1993, No. 440, § 7; 2017, No. 244, § 2; 2019, No. 910, § 2449.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1).

CHAPTER 3

WATER AND AIR POLLUTION GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER.

2. STATE EMISSION PLANS — PROCEDURES — APPROVAL.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

8-3-102. Ambient air quality standards
— Hydrogen sulfide.

SECTION.

8-3-103. Hydrogen sulfide emissions —
Definition.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-3-102. Ambient air quality standards — Hydrogen sulfide.

(a) After review of scientific literature and similar standards in other states, the Arkansas Pollution Control and Ecology Commission shall promulgate, through procedures set out in § 8-4-202, ambient air quality standards or other appropriate regulatory controls that will protect the public health and the environment from the emission of hydrogen sulfide.

(b)(1) Before the commission proposes an ambient standard or regulatory mechanism concerning hydrogen sulfide that will result in more stringent or restrictive control provisions than are currently provided by Division of Environmental Quality permitting practices, the commission shall direct the division to prepare, with the assistance and cooperation of state agencies with appropriate expertise, an economic impact and environmental benefit analysis justifying more stringent or restrictive operating conditions.

(2) The economic impact and environmental benefit analysis shall include without limitation the:

- (A) Benefit to the public health;
- (B) Preservation of environmental quality; and
- (C) Cost to the regulated community and the division.

(3) The conclusions of an economic impact and environmental benefit analysis shall be included in any public notice of the proposed rulemaking and shall be subject to public comment.

History. Acts 1997, No. 856, § 1; 2009, No. 1199, § 4; 2019, No. 910, §§ 2450, 2451.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in (b)(1); and substituted “division” for “department” in (b)(1) and (b)(2)(C).

8-3-103. Hydrogen sulfide emissions — Definition.

(a) AMBIENT CONCENTRATION STANDARD.

(1) Except as provided in subsection (d) of this section, no person shall cause or permit emissions from any facility that result in predicted ambient hydrogen sulfide concentrations at any place beyond the facility’s perimeter property boundary greater than eighty parts per billion (80 ppb) for any eight-hour averaging period for residential areas, or greater than one hundred parts per billion (100 ppb) for any eight-hour averaging period for nonresidential areas.

(2) No person shall cause or permit emissions from any facility that result in actual ambient hydrogen sulfide concentrations at any place beyond the facility’s perimeter property boundary greater than twenty parts per million (20 ppm) for any five-minute averaging period.

(b) METHOD OF PREDICTION. All estimates of ambient concentrations required under this section shall be performed by the Division of Environmental Quality or performed by the facility and approved by the division based on the facility’s potential to emit hydrogen sulfide, the applicable air quality models, databases, and other requirements specified in the “Guideline on Air Quality Models (Revised)” (1986), supplement A (1987) and supplement B (1993).

(c) COMPLIANCE PLAN.

(1) In the event the standard is predicted to be exceeded, the facility or facilities whose emissions are found to contribute to the excess shall be given a reasonable period of time to undertake measures to demonstrate compliance, such as a site-specific risk assessment that demonstrates that the emissions do not pose a risk to human health at the nearest public receptor, ambient monitoring, that demonstrates that the standard is not being exceeded, or undertaking emission reduction measures to reduce emissions of hydrogen sulfide such that the standard will not be exceeded.

(2) The compliance measures and schedule of compliance shall be stated in an enforceable settlement agreement or permit modification or, if the facility does not have an existing permit, an enforcement order.

(d) CONTROL TECHNOLOGY REQUIREMENTS.

(1) GENERAL REQUIREMENTS. Rather than demonstrate compliance with the ambient limit contained in subsection (a) of this section, a facility may elect to install and operate or continue to operate appropriate control technology that addresses hydrogen sulfide emissions for that source or source category.

(2) DETERMINATION OF APPROPRIATE CONTROL TECHNOLOGY.

(A) For purposes of this section, “appropriate hydrogen sulfide control technology” means control technology, operational practices,

or some combination thereof, which will result in the lowest emissions of hydrogen sulfide that a particular facility is reasonably capable of meeting, considering technological and economic feasibility.

(B) Compliance with all applicable portions of the following technology standards, in accordance with the schedule set forth in such standards, shall be deemed to be compliance with appropriate hydrogen sulfide control technology:

(i) Maximum Achievable Control Technology Standards issued pursuant to § 112 of the Clean Air Act, 42 U.S.C. § 7412, promulgated at 40 C.F.R. Part 63, when compliance with such standards will reduce hydrogen sulfide emissions;

(ii) Standards of Performance for New Stationary Sources, promulgated at 40 C.F.R. Part 60:

(a) Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J;

(b) Standards of Performance for Kraft Pulp Mills, 40 C.F.R. Part 60, Subpart BB;

(c) Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry, 40 C.F.R. Part 60, Subpart VV;

(d) Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries, 40 C.F.R. Part 60, Subpart GGG;

(e) Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants, 40 C.F.R. Part 60, Subpart KKK; or

(f) Standards of Performance for SO₂ Emissions from Onshore Natural Gas Processing, 40 C.F.R. Part 60, Subpart LLL; or

(iii) National Emission Standards for Hazardous Air Pollutants under Title III of the Clean Air Act, 42 U.S.C. § 7601 et seq., and standards of performance promulgated pursuant to § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), when compliance with such standards will reduce hydrogen sulfide emissions.

(C) A facility that is not subject to one (1) of the technology limits listed in subdivision (d)(2)(B) of this section and that wishes to apply appropriate hydrogen sulfide control technology may apply to the division for a determination of appropriateness at any time, but no later than ninety (90) days after a determination that the ambient standard has been exceeded. The application shall be made on such forms and contain such information as the division may require and shall include a reasonable time schedule for implementation. When making a determination of appropriateness, the division shall follow the procedures used for making permitting decisions, including public participation requirements.

(D) The ambient standard shall not apply to the following facilities:

(i) Natural gas pipelines and related facilities that do not transmit gas with a concentration of hydrogen sulfide in excess of four parts per million (4 ppm);

- (ii) Natural gas gathering and production pipelines and related facilities that do not transmit gas with a concentration of hydrogen sulfide in excess of thirty parts per million (30 ppm);
 - (iii) Brine pipelines that carry natural gas as a byproduct of the brine;
 - (iv) Wastewater treatment facilities; and
 - (v) Oil and gas drilling and production operations and facilities from the wellhead to the custodial transfer meter as that term is defined by law.
- (e) The Oil and Gas Commission is hereby delegated the authority to set hydrogen sulfide standards for oil and gas drilling and production facilities from the wellhead to the custodial transfer meter.

History. Acts 1999, No. 1136, § 1; 2019, No. 910, §§ 2452, 2453.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in (b); and substituted “division” for “department” in (b) and three times in (d)(2)(C).

SUBCHAPTER 2 — STATE EMISSION PLANS — PROCEDURES — APPROVAL

SECTION.	SECTION.
8-3-201. Findings — Purpose.	8-3-206. Submission of state plan.
8-3-202. Definitions.	8-3-207. Procedures for approval of state plan.
8-3-203. State plan preferred — State plan dependent on federal emission guidelines.	8-3-208. Feasibility study.
8-3-204. Appeal of state plan — Adjudicatory process.	8-3-209. Waiver of review and approval procedures for emissions plans.
8-3-205. Assessing effects of state plan.	

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-3-201. Findings — Purpose.

- (a) The General Assembly finds that:
 - (1) The United States Environmental Protection Agency has proposed emission guidelines for the regulation of carbon dioxide emissions from existing fossil-fuel-fired electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d);

(2) The proposed guidelines will have a major impact on the economy of Arkansas by regulating how electricity is produced, transmitted, distributed, and consumed within the state;

(3) The United States Environmental Protection Agency requires states to take the lead role in the regulation of existing fossil-fuel-fired electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), by developing state plans for the establishment and implementation of performance standards for reducing carbon dioxide emissions from fossil-fuel-fired electric generating units;

(4) The role of the United States Environmental Protection Agency is limited to establishing federal emission guidelines that assist the states in the development of their state plans to regulate carbon dioxide emissions from existing fossil-fuel-fired electric generating units and, in establishing federal emission guidelines, the United States Environmental Protection Agency must defer to the states regarding methods for regulating fossil-fuel-fired electric generating units within their jurisdictions; and

(5) This subchapter expresses the intent of the General Assembly to exercise the powers of the General Assembly under Arkansas Constitution, Article 5, § 42, to:

(A) Review and approve state agency rules;

(B) Ensure that rules become effective only after review and approval by the legislative committee charged with review of the rules; and

(C) Review rules during the interim or a regular, special, or fiscal session of the General Assembly.

(b) The purpose of this subchapter is to ensure that:

(1) Before the submission of a state plan to the United States Environmental Protection Agency, the rules of the Arkansas Pollution Control and Ecology Commission that implement the state plan are reviewed and approved by the General Assembly through the Legislative Council consistent with Arkansas Constitution, Article 5, § 42, and any laws promulgated pursuant to Arkansas Constitution, Article 5, § 42; and

(2) The state plan is reviewed through a transparent public process that assesses the full impact of the state plan on rates, reliability, employment, and manufacturing greenhouse gas leakage.

(c) This subchapter does not create a private right of action for enforcement purposes.

History. Acts 2015, No. 382, § 1; 2019, No. 315, § 445. substituted “rules” for “regulations” in (b)(1).

Amendments. The 2019 amendment

8-3-202. Definitions.

As used in this subchapter:

(1) “Covered electric generating unit” means an existing fossil-fuel-fired electric generating unit within the state that is subject to regulation under federal emission guidelines;

(2) “Federal emission guidelines” means a final rule, regulation, guideline, or other requirement that the United States Environmental Protection Agency may adopt for regulating carbon dioxide emissions from covered electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d); and

(3) “State plan” means a plan to establish and enforce carbon dioxide emission control measures that the Division of Environmental Quality may adopt to implement the obligations of the state under the federal emission guidelines.

History. Acts 2015, No. 382, § 1; 2019, No. 910, § 2454. substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (3).

Amendments. The 2019 amendment

8-3-203. State plan preferred — State plan dependent on federal emission guidelines.

(a)(1) This subchapter does not require the Division of Environmental Quality to develop a state plan to regulate carbon dioxide emissions from existing fossil-fuel-fired electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d).

(2) However, submission of a state plan is the preferred method of compliance with federal emission guidelines.

(b)(1) Notwithstanding approval by the Legislative Council of submission of a state plan to the United States Environmental Protection Agency or submission by the Governor of a state plan under § 8-3-207, further action by a state agency to implement or enforce a final, approved state plan is dependent upon the final adoption of the federal emission guidelines.

(2) If the federal emission guidelines are not adopted or are adopted and subsequently suspended or held to be contrary to law, a state agency shall suspend or terminate, as appropriate, further action to implement or enforce the state plan.

History. Acts 2015, No. 382, § 1; 2019, No. 910, § 2455. substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1).

Amendments. The 2019 amendment

8-3-204. Appeal of state plan — Adjudicatory process.

(a) If the Division of Environmental Quality proposes to finalize a state plan submittal for review and approval by the United States Environmental Protection Agency, the division shall comply with the procedural requirements for notice and public comment specified in § 8-4-317.

(b)(1) Only a person or an organization that submits comments on the record during the public comment period has standing to appeal the

final decision of the division to the Arkansas Pollution Control and Ecology Commission upon written application made within thirty (30) days after the service of notice made under § 8-4-317(b)(2)(A).

(2) An appeal under subdivision (b)(1) of this section shall be processed as a permit appeal under § 8-4-205.

History. Acts 2015, No. 382, § 1; 2019, No. 910, § 2456.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" in (a) and (b)(1).

8-3-205. Assessing effects of state plan.

(a) Before completing a state plan for regulating carbon dioxide emissions from covered electric generating units, the Division of Environmental Quality shall prepare a report that takes into account the factors specified in § 8-4-312 and the Clean Air Act, 42 U.S.C. § 7401 et seq., as applicable.

(b)(1) In addition to the report specified in subsection (a) of this section, the division shall coordinate with the Arkansas Public Service Commission in the preparation of a report that assesses the effects of the state plan on the electric power sector, including without limitation:

(A) The ability of the state to provide affordable electricity through diversified sources of electricity generation;

(B) The type and amount of electric generating capacity within the state that is likely to withdraw from the state or switch to another fuel;

(C) Stranded investment in electric generating and transmission capacity and other assets and infrastructure;

(D) Potential risks to electric reliability within the state, including without limitation resource adequacy risks, transmission constraints, and natural gas supply and transmission adequacy; and

(E)(i) The amount by which retail electricity and any replacement fuel prices within the state are forecast to increase.

(ii) A rate impact assessment shall consider nonfuel costs, including generation, transmission, distribution, surcharges for renewable energy and energy efficiency, capital investment, upgrades to meet environmental requirements, utility profits, financing costs for new investments, unappreciated capital assets retired prematurely, and other nonfuel costs and surcharges, and the amount of funds contributed from all in-state taxpayers to local, state, and federal subsidies, grants, and credits to fund in-state electric generation sources, electric storage, and energy efficiency.

(2) The division shall further coordinate with the Arkansas Economic Development Commission in the preparation of a report that assesses the effects of the state plan on the electricity consumers within the state, including without limitation:

(A) Disproportionate impacts of electricity and other replacement energy price increases on middle-income and lower-income households;

(B) Employment within the state, including without limitation direct and indirect employment effects and jobs potentially lost within affected sectors of the state's economy;

(C) Economic development within the state, including without limitation effects on manufacturing, commercial, and other sectors of the state's economy;

(D) The competitive position of the state in relation to neighboring states and other economic competitors; and

(E) State and local governments, including without limitation potential impacts resulting from changes in tax revenues and higher government outlays for electric service.

(c) The reports required by this section shall be included with any petition filed by the division to initiate rulemaking for rules that implement a state plan for regulating carbon dioxide emissions from covered electric generating units.

History. Acts 2015, No. 382, § 1; 2019, No. 315, §§ 446, 447; 2019, No. 910, §§ 2457-2460; 2019, No. 934, § 2.

A.C.R.C. Notes. Acts 2019, No. 934, § 1, provided: "Legislative purpose. The purpose of this act is to:

"(1) Create a means to waive procedures for legislative review and approval of state plans when final emission guidelines are promulgated by the United States Environmental Protection Agency under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), for electric generating units when those emission guidelines are determined to not require any one (1) or more of the following:

"(A) Shifting electricity generation from one fuel type to another;

"(B) Closing any fossil fuel-fired electric generating unit; or

"(C) Imposing statewide greenhouse gas goals or other statewide greenhouse gas emission limitations; and

"(2) Revise the requirements under § 8-3-201 et seq. pertaining to a state plan to ensure consistency with the Clean Air Act and to avoid the imposition of a federal plan."

Publisher's Notes. Acts 2019, No. 934, § 2 specifically amended subsection (a) of this section as amended by Acts 2019, No. 315.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a) and (c).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" in (b) and (c).

The 2019 amendment by No. 934 substituted "completing" for "preparing a petition to initiate rulemaking for the development of rules implementing" in (a).

8-3-206. Submission of state plan.

(a) The Division of Environmental Quality shall not submit a state plan to the United States Environmental Protection Agency under § 8-3-207 if the state plan:

(1) Results in a significant rate increase annually for any rate class of the total delivered electricity cost per kilowatt hour or of the total natural gas cost per thousand cubic feet; or

(2) Results in unreasonable reliability risks.

(b) The division shall not submit a state plan to the United States Environmental Protection Agency until:

(1) The Legislative Council has approved the state plan under § 8-3-207(b); or

(2) The Governor directs the submission of a state plan under § 8-3-207(d).

History. Acts 2015, No. 382, § 1; 2019, No. 910, §§ 2461, 2462.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (b).

8-3-207. Procedures for approval of state plan.

(a) Before transmitting a state plan to the Governor for submission of the state plan to the United States Environmental Protection Agency, the Division of Environmental Quality shall transmit to the cochair of the Legislative Council a copy of the state plan and the accompanying report developed under § 8-3-205.

(b)(1) Upon receiving the state plan and the accompanying report transmitted under subsection (a) of this section and after sufficient time has been provided to assess the state plan and the accompanying report, the Legislative Council shall vote on approval of the state plan.

(2) An affirmative majority vote of the Legislative Council is required for approval of the state plan.

(c) If the Legislative Council fails to approve a state plan under subsection (b) of this section, the division may submit a revised version of the state plan, with an accompanying revised report, to the cochair of the Legislative Council for approval under this section.

(d) Notwithstanding the provisions of this subchapter, in the absence of legislative approval under subsection (b) of this section, the Governor may direct the submission of a state plan to the United States Environmental Protection Agency if, in his or her judgment:

(1) Sufficient time has passed for the Legislative Council to consider a state plan submitted by the division for legislative approval;

(2) Further delay would result in the failure to submit a state plan by the relevant deadline for submission; and

(3) Failure to submit a state plan would likely result in the imposition of a federal implementation plan.

(e) This subchapter does not eliminate the requirement of legislative approval of rules promulgated to implement or enforce the state plan subsequently to gubernatorial action under subsection (d) of this section.

History. Acts 2015, No. 382, § 1; 2019, No. 315, § 448; 2019, No. 910, §§ 2463-2465; 2019, No. 934, §§ 3, 4.

A.C.R.C. Notes. Acts 2019, No. 934, § 1, provided: “Legislative purpose. The purpose of this act is to:

“(1) Create a means to waive procedures for legislative review and approval of state plans when final emission guidelines are promulgated by the United

States Environmental Protection Agency under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), for electric generating units when those emission guidelines are determined to not require any one (1) or more of the following:

“(A) Shifting electricity generation from one fuel type to another;

“(B) Closing any fossil fuel-fired electric generating unit; or

“(C) Imposing statewide greenhouse gas goals or other statewide greenhouse gas emission limitations; and

“(2) Revise the requirements under § 8-3-201 et seq. pertaining to a state plan to ensure consistency with the Clean Air Act and to avoid the imposition of a federal plan.”

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (e).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (c) and (d)(1).

The 2019 amendment by No. 934 rewrote (a); and inserted “likely” in (d)(1).

8-3-208. Feasibility study.

If a state plan approved under this subchapter would result in a significant increase in the total electric or natural gas bill annually for any customer class as determined by the Arkansas Public Service Commission, the Division of Environmental Quality shall prepare a feasibility study to determine whether:

(1) An alternative approach is consistent with the Clean Air Act, 42 U.S.C. § 7401 et seq.; or

(2) The pursuit of implementing an alternative approach is likely to result in the imposition of a federal plan.

History. Acts 2015, No. 382, § 1; 2019, No. 910, § 2466; 2019, No. 934, § 5.

A.C.R.C. Notes. Acts 2019, No. 934, § 1, provided: “Legislative purpose. The purpose of this act is to:

“(1) Create a means to waive procedures for legislative review and approval of state plans when final emission guidelines are promulgated by the United States Environmental Protection Agency under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), for electric generating units when those emission guidelines are determined to not require any one (1) or more of the following:

“(A) Shifting electricity generation from one fuel type to another;

“(B) Closing any fossil fuel-fired electric generating unit; or

“(C) Imposing statewide greenhouse gas goals or other statewide greenhouse gas emission limitations; and

“(2) Revise the requirements under § 8-3-201 et seq. pertaining to a state plan to ensure consistency with the Clean Air Act and to avoid the imposition of a federal plan.”

Acts 2019, No. 910, § 2466, amended former subsection (b) of this section to replace “department” with “division”. However, Acts 2019, No. 934, § 5, specifically repealed this subsection.

Amendments. The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (b)(1) and (b)(2).

The 2019 amendment by No. 934 deleted (b); and rewrote the remaining provisions.

8-3-209. Waiver of review and approval procedures for emissions plans.

(a) The Division of Environmental Quality may seek a waiver of review and approval procedures for emissions plans from the Legislative Council if the division determines that final federal emission guidelines do not require any one (1) or more of the following:

(1) Shifting generation from electric generating units powered by one fuel type to another fuel type;

(2) Closing any fossil fuel-fired electric generating unit; or

(3) Imposing a statewide greenhouse gas goal or other statewide greenhouse gas emissions limitation.

(b) A request to the Legislative Council under subsection (a) of this section shall include an explanation of how the final emission guidelines for the regulation of carbon dioxide emissions from existing fossil fuel-fired electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411, do not require any of the factors in subsection (a) of this section.

(c) The division shall not seek a waiver under subsection (a) of this section until the United States Environmental Protection Agency promulgates emission guidelines for the regulation of carbon dioxide emissions from existing fossil fuel-fired electric generating units under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d).

(d) An affirmative majority vote of the Legislative Council is required to grant a waiver of review and approval procedures for a state plan.

(e) If the Legislative Council grants a waiver under this section, then all requirements in §§ 8-3-203 and 8-3-205 — 8-3-207 are waived.

(f) If the Legislative Council grants a waiver under this section, the division may submit a state plan to the United States Environmental Protection Agency.

History. Acts 2019, No. 934, § 6.

A.C.R.C. Notes. Acts 2019, No. 934, § 1, provided: “Legislative purpose. The purpose of this act is to:

“(1) Create a means to waive procedures for legislative review and approval of state plans when final emission guidelines are promulgated by the United States Environmental Protection Agency under § 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), for electric generating units when those emission guidelines are determined to not require any one (1) or

more of the following:

“(A) Shifting electricity generation from one fuel type to another;

“(B) Closing any fossil fuel-fired electric generating unit; or

“(C) Imposing statewide greenhouse gas goals or other statewide greenhouse gas emission limitations; and

“(2) Revise the requirements under § 8-3-201 et seq. pertaining to a state plan to ensure consistency with the Clean Air Act and to avoid the imposition of a federal plan.”

CHAPTER 4

ARKANSAS WATER AND AIR POLLUTION CONTROL ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. WATER POLLUTION.
3. AIR POLLUTION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

8-4-103. Criminal, civil, and administrative penalties.

8-4-104. Arkansas Pollution Control and Ecology Commission — Members.

SECTION.

8-4-105. [Repealed.]

8-4-106. Technical and other services and public assistance.

8-4-107. Prosecution of public nuisance actions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-4-103. Criminal, civil, and administrative penalties.

(a) CRIMINAL PENALTIES.

(1)(A) Any person that violates any provision of this chapter, that commits any unlawful act under it, or that violates any rule or order of the Arkansas Pollution Control and Ecology Commission or the Division of Environmental Quality shall be guilty of a misdemeanor.

(B)(i) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

(a) Imprisonment for not more than one (1) year;

(b) A fine of not more than twenty-five thousand dollars (\$25,000);

or

(c) Both such fine and imprisonment.

(ii) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) It shall be unlawful for a person to:

(i) Violate any provision of this chapter, commit any unlawful act under it, or violate any rule or order of the commission or the Division of Environmental Quality and leave the state or remove his or her person from the jurisdiction of this state;

(ii) Purposely, knowingly, or recklessly cause pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby create a substantial likelihood of adversely affecting human health, animal or plant life, or property; or

(iii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained

under this chapter or falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this chapter.

(B)(i) A person that violates subdivision (a)(2)(A) of this section shall be guilty of a felony.

(ii)(a) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

(1) Imprisonment for not more than five (5) years;

(2) A fine of not more than fifty thousand dollars (\$50,000); or

(3) Both such fine and imprisonment.

(b) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(3)(A) Any person that purposely, knowingly, or recklessly causes pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a felony.

(B)(i) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

(a) Imprisonment for not more than twenty (20) years;

(b) A fine of not more than two hundred fifty thousand dollars (\$250,000); or

(c) Both such fine and imprisonment.

(ii) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(4) Notwithstanding the limits on fines set in subdivisions (a)(1)-(3) of this section, if a person convicted under subdivision (a)(1) of this section, subdivision (a)(2) of this section, or subdivision (a)(3) of this section has derived or will derive pecuniary gains from commission of the offenses, then the person may be sentenced to pay a fine not to exceed two (2) times the amount of the pecuniary gain.

(b) CIVIL PENALTIES. The Division of Environmental Quality may institute a civil action in any court of competent jurisdiction to accomplish any of the following:

(1) Restrain any violation of or compel compliance with the provisions of this chapter and of any rules, orders, permits, or plans issued pursuant to this chapter;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this chapter;

(3) Recover all costs, expenses, and damages to the Division of Environmental Quality and any other agency or division of the state in enforcing or effectuating the provisions of this chapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this chapter and of any rules, permits, or plans issued pursuant to this chapter; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

(c)(1)(A) Any person that violates any provision of this chapter and rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.

(B) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.

(2)(A) No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with rules adopted by the commission.

(B) All hearings and appeals arising under this chapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229.

(C) These administrative procedures may also be used to recover all costs, expenses, and damages to the Division of Environmental Quality and any other agency or subdivision of the state in enforcing or effectuating the provisions of this chapter, including, but not limited to, natural resource damages.

(d)(1)(A) Before assessing a civil penalty under subsection (c) of this section, the Director of the Division of Environmental Quality shall provide public notice of and a reasonable opportunity to comment on the proposed issuance of the order.

(B) If the civil penalty is being assessed under an order on consent, the order shall not be effective until thirty (30) days after the publication of notice of the order.

(C) Notice shall also be given to each member of the commission.

(D) If a civil penalty is being assessed for a violation that occurs within the corporate limits of any municipality in Arkansas, a copy of the public notice shall be delivered to the chief executive officer of the municipality in which the alleged violation occurred, along with a copy of any proposed order concerning the violation, and the municipality shall be given a reasonable opportunity to comment on the proposed order consistent with the public notice and comment requirements of this chapter and rules promulgated under this chapter.

(2) Notice of any administrative enforcement order shall contain the following:

(A) The identity of the person or facility alleged to be in violation;

(B) The location by city or county of the alleged violation;

(C) A brief description by environmental media, that is, water, air, solid waste, or hazardous waste, impacted by the alleged violation;

(D) The type of administrative action proposed, that is, a consent order, a notice of violation, or an emergency order; and

(E) The amount of penalty to be assessed.

(3)(A) Any person that comments on a proposed assessment of a penalty under this subsection shall be given notice of any hearing held under this subsection.

(B) In any hearing held under this subsection, the person shall have a right to intervene upon timely application.

(4)(A)(i) If no adjudicatory hearing is held on a proposed order, any person that commented on the proposed order may petition the commission to set aside the order and provide an adjudicatory hearing.

(ii) A petition to set aside such an order must be filed with the commission within thirty (30) days of service of the order.

(B) If the evidence presented by the petitioner is material and was not considered in the issuance of the order and the commission finds in light of the new evidence that the order is not reasonable and appropriate, it may set aside the order and provide a hearing.

(C) If the commission denies a hearing under this subdivision (d)(4), it shall provide to the petitioner notice of and its reasons for the denial. The denial of such a hearing may be appealed pursuant to § 8-4-222.

(5) On its own initiative, the commission may institute review of any enforcement action taken by the director within thirty (30) days of the effective date of the order.

(e) As an alternative to the limits on civil penalties set in subsections (b) and (c) of this section, if a person found liable in actions brought under subsection (b) of this section or subsection (c) of this section has derived pecuniary gain from commission of the offenses, then he or she may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

(f)(1) All moneys collected as reimbursement for expenses, costs, and damages to the Division of Environmental Quality shall be deposited into the operating fund of the Division of Environmental Quality.

(2) All moneys collected as civil penalties shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

(3)(A) In his or her discretion, the director may authorize in-kind services or cash contributions as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

(B) The violator may provide in-kind services or cash contributions as directed by the Division of Environmental Quality by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the services, by arranging and providing financing for the services, or by other financial arrangements initiated by the Division of Environmental Quality in which the violator and the Division of Environmental Quality retain no monetary benefit, however remote.

(C) The services shall not duplicate or augment services already provided by the Division of Environmental Quality through appropriations of the General Assembly.

(4) All moneys collected that represent the costs, expenses, or damages of other agencies or subdivisions of the state shall be distributed to the appropriate governmental entity.

(g)(1) Pursuant to duly promulgated ordinances or regulations, any governmental entity permitted to operate a publicly owned treatment works shall have the authority to collect in a court of competent jurisdiction civil or criminal penalties in an amount not to exceed one thousand dollars (\$1,000) for each violation by industrial users of pretreatment standards or requirements.

(2) Such a criminal or civil action may be initiated only after a majority vote of the entity's governing body resolves to pursue such an action.

(3) For the purpose of this subsection, each day of a continuing violation may be deemed a separate violation.

(h) The culpable mental states referenced throughout this section shall have the same definitions as set out in § 5-2-202.

(i) Solicitation, as defined by § 5-3-301 et seq., or conspiracy, as defined by § 5-3-401 et seq., to commit any criminal act proscribed by this section and §§ 8-6-204 and 8-7-204 shall be punishable as follows:

(1) Any solicitation or conspiracy to commit an offense under this section that is a misdemeanor shall be a misdemeanor subject to:

(A) Fines not to exceed fifteen thousand dollars (\$15,000) per day of violation;

(B) Imprisonment for more than six (6) months; or

(C) Both such fines and imprisonment;

(2) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to:

(A) Fines up to thirty-five thousand dollars (\$35,000) per day;

(B) Imprisonment up to two (2) years; or

(C) Both such fines and imprisonment;

(3) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of one hundred thousand dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to:

(A) Fines up to seventy-five thousand dollars (\$75,000) per day;

(B) Imprisonment up to seven (7) years; or

(C) Both such fines and imprisonment; and

(4) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to:

(A) Fines up to one hundred fifty thousand dollars (\$150,000) per day;

(B) Imprisonment up to fifteen (15) years; or

(C) Both such fines and imprisonment.

(j) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environmental effects caused by the defendant's activities may be considered by the court to be restitution as contemplated by § 5-4-301.

(k) A business organization or its agents or officers may be found liable under this section in accordance with the standards set forth in

§ 5-2-501 et seq. and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).

(1)(1) A person that uses a cleaning agent in violation of this chapter upon conviction is guilty of a violation and is subject to a fine not exceeding one hundred dollars (\$100).

(2) A person that sells, distributes, or manufactures a cleaning agent in violation of this chapter upon conviction is guilty of a violation and is subject to a fine not exceeding one thousand dollars (\$1,000).

(3)(A) The Division of Environmental Quality may seize any cleaning agent held for sale or distribution in violation of this chapter.

(B) The seized cleaning agents are considered forfeited.

History. Acts 1949, No. 472, [Part 1], § 9; 1973, No. 262, § 10; 1975, No. 743, § 8; 1983, No. 733, § 1; A.S.A. 1947, § 82-1909; Acts 1987, No. 529, § 1; 1991, No. 884, § 1; 1991, No. 1057, §§ 3, 5; 1993, No. 163, § 10; 1993, No. 165, § 10; 1993, No. 454, § 2; 1993, No. 461, § 2; 1993, No. 731, § 3; 1995, No. 384, § 5; 1995, No. 895, § 1; 2003, No. 133, § 1; 2005, No. 1824, § 5; 2013, No. 1127, § 1; 2019, No. 315, §§ 449-455; 2019, No. 693, § 5; 2019, No. 910, §§ 2467-2475.

Amendments. The 2019 amendment by No. 315, throughout the section, deleted “regulation” following “rule”, substi-

tuted “rules” for “regulations”, and made similar changes.

The 2019 amendment by No. 693, in (1)(1) and (1)(2), substituted “upon conviction is guilty of a violation and is” for “is guilty of a misdemeanor and upon conviction is”.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1)(A) and (d)(1)(A); and substituted “Division of Environmental Quality” for “department” throughout the section.

8-4-104. Arkansas Pollution Control and Ecology Commission — Members.

(a) There is created and established an Arkansas Pollution Control and Ecology Commission.

(b) The Arkansas Pollution Control and Ecology Commission shall be composed of fifteen (15) members:

(1)(A) The Governor, by and with the advice and consent of the Senate, shall appoint eight (8) members.

(B) Each congressional district shall be represented on the Arkansas Pollution Control and Ecology Commission by at least one (1) member, and no district shall have more than two (2) members of the eight (8) appointees.

(C)(i) The Governor shall not appoint a member to represent any specific or special interest group, organization, or philosophy.

(ii) However, in making appointments to the Arkansas Pollution Control and Ecology Commission, the Governor shall appoint individuals who have knowledge or expertise in matters within the jurisdiction of the Arkansas Pollution Control and Ecology Commission, including government, business or industry, agriculture and livestock, forestry, health, ecology, recreation and tourism, and geology.

(D) Each member appointed by the Governor shall be appointed for a term of four (4) years; and

(2) The other seven (7) members of the Arkansas Pollution Control and Ecology Commission shall be:

(A) The Secretary of the Department of Health, or his or her designee;

(B) The Secretary of the Department of Agriculture, or his or her designee;

(C) The Director of the Arkansas State Game and Fish Commission, or his or her designee;

(D) The State Forester, or his or her designee on behalf of the Arkansas Forestry Commission;

(E) The Director of the Oil and Gas Commission, or his or her designee;

(F) The Director of the Arkansas Natural Resources Commission, or his or her designee; and

(G) The State Geologist, or his or her designee, on behalf of the Arkansas Geological Survey.

(c) Elected city, county, and state officials shall not serve on the Arkansas Pollution Control and Ecology Commission after the expiration of any current member's term.

(d) In the event of a vacancy in the membership of the Arkansas Pollution Control and Ecology Commission, the Governor shall appoint a person to fill the vacancy temporarily who shall serve until the next meeting of the Senate, when some person shall be appointed by the Governor, by and with the consent and approval of the Senate, to serve the remainder of the unexpired term.

(e)(1) The chair and vice chair shall be elected annually.

(2) The members of the Arkansas Pollution Control and Ecology Commission representing the state agencies shall not serve as chair or vice chair.

(f)(1)(A) The Arkansas Pollution Control and Ecology Commission shall hold at least four (4) regular meetings in each calendar year at times and places to be fixed by the Arkansas Pollution Control and Ecology Commission and such other meetings as may be necessary.

(B) Special meetings may be called at the discretion of the chair, and they shall be called by him or her upon written request of two (2) members of the Arkansas Pollution Control and Ecology Commission by delivery of written notice to each member of the Arkansas Pollution Control and Ecology Commission.

(2) Nine (9) members of the Arkansas Pollution Control and Ecology Commission shall constitute a quorum to transact business in both regular and special meetings.

(g)(1) Each member of the Arkansas Pollution Control and Ecology Commission representing state agencies shall receive no additional salary or per diem for services as a member of the Arkansas Pollution Control and Ecology Commission but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(2) The other seven (7) members appointed by the Governor may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1949, No. 472 [Part 1], § 2; 1953, No. 232, § 1; 1959, No. 211, § 1; 1965, No. 183, § 2; 1985, No. 930, § 1; A.S.A. 1947, § 82-1903; Acts 1991, No. 744, § 1; 1997, No. 250, § 44; 2001, No. 318, § 1; 2005, No. 2224, § 1; 2019, No. 910, § 2476.

Amendments. The 2019 amendment substituted “fifteen (15) members” for “thirteen (13) members” in the introduc-

tory language of (b); substituted “eight (8) members” for “seven (7) members” in (b)(1)(A); substituted “eight (8) appointees” for “seven (7) appointees” in (b)(1)(B); substituted “seven (7) members” for “six (6) members” in the introductory language of (b)(2); substituted “Secretary” for “Director” in (b)(2)(A); rewrote (b)(2)(B); and added (b)(2)(C) through (b)(2)(G).

8-4-105. [Repealed.]

Publisher’s Notes. This section, concerning the Director of the Arkansas Department of Environmental Quality, was repealed by Acts 2019, No. 910, § 2477, effective July 1, 2019. The section was

derived from Acts 1949, No. 472 [Part 1], § 2; 1963, No. 503, § 1; 1973, No. 262, § 2; A.S.A. 1947, § 82-1903; Acts 1991, No. 744, § 2; 1999, No. 1164, § 16.

8-4-106. Technical and other services and public assistance.

(a) Technical, scientific, legal, or other services may be performed, insofar as practicable, by personnel of other state agencies and educational institutions and the Attorney General. However, the personnel of these state agencies shall receive no additional salary or wages for their services to the Division of Environmental Quality.

(b) The Director of the Division of Environmental Quality, however, may employ and compensate, within appropriations available, consultants and such assistants and employees as may be necessary to carry out the provisions of this chapter and prescribe their powers and duties.

History. Acts 1949, No. 472 [Part 1], § 2; 1963, No. 503, § 1; 1965, No. 183, § 3; 1973, No. 262, § 3; A.S.A. 1947, § 82-1903; Acts 1991, No. 744, § 3; 1999, No. 1164, § 17; 2019, No. 910, § 2478.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a) and (b).

8-4-107. Prosecution of public nuisance actions.

In any legal action arising from, relating to, or including violations of laws or rules charged to the enforcement authority of the Division of Environmental Quality that also alleges the existence of a public nuisance at common law, the Attorney General or the division may serve as the instrumentality of the state authorized to initiate and prosecute such action.

History. Acts 1991, No. 516, § 4; 1999, No. 1164, § 18; 2019, No. 315, § 456; 2019, No. 910, § 2479.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations”.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” and “division” for “department”.

SUBCHAPTER 2 — WATER POLLUTION

SECTION.

- 8-4-201. Powers and duties of division and commission generally.
- 8-4-202. Rules.
- 8-4-203. Permits generally — Definitions.
- 8-4-204. Permits — Revocation.
- 8-4-205. Permits — Hearings upon denial, revocation, or modification and other permit actions — Definition.
- 8-4-206. State water pollution control agency — General authority.
- 8-4-207. State water pollution control agency — Powers and duties generally.
- 8-4-208. State water pollution control agency — Administration of permit program generally.
- 8-4-209. State water pollution control agency — Participation of certain persons prohibited in approval of permit applications.
- 8-4-210. Investigations and hearings generally.
- 8-4-211. Declaratory orders.
- 8-4-212. Adjudicatory hearings and orders.

SECTION.

- 8-4-213. Conclusiveness of commission actions.
- 8-4-215. Intergovernmental cooperation.
- 8-4-216. Information and inspections.
- 8-4-217. Unlawful actions.
- 8-4-218. Violations of chapter, orders, rules, etc. — Hearings — Notice.
- 8-4-220. Violation of chapter, orders, rules, etc. — Order of division without hearing.
- 8-4-223. Appeals — Notice.
- 8-4-225. Appeals — Venue.
- 8-4-226. Appeal — Response by commission and record.
- 8-4-229. Appeals, proceedings, etc. — Presumptions.
- 8-4-230. Temporary variances and interim authority.
- 8-4-231. Effectiveness of regulations, rules, or orders.
- 8-4-232. Nutrient water quality trading programs — Definition.
- 8-4-233. Nutrient Water Quality Trading Advisory Panel — Creation — Members — Duties.
- 8-4-234. Short-term activity authorization.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

RESEARCH REFERENCES

ALR. Comment Note: What Constitutes “Point Source” of Pollution Subject to Control by Provisions of Clean Water Act (33

U.S.C. § 1362(14)), 29 A.L.R. Fed. 3d Art. 10 (2018).

8-4-201. Powers and duties of division and commission generally.

(a) The Division of Environmental Quality or its successor is given and charged with the following powers and duties:

(1) **ENFORCEMENT OF LAWS.** To administer and enforce all laws and regulations relating to the pollution of any waters of the state;

(2) **INVESTIGATIONS AND SURVEYS.**

(A) To investigate the extent, character, and effect of the pollution of the waters of this state; and

(B) To conduct investigations, research, surveys, and studies and gather data and information necessary or desirable in the administration or enforcement of pollution laws;

(3) **PROGRAM.** To prepare a comprehensive program for the elimination or reduction of the pollution of the waters of this state, including application for and delegation of federal regulatory programs; and

(4) **PLANS OF DISPOSAL SYSTEMS.** To require to be submitted and to approve plans and specifications for disposal systems, or any part of them, and to inspect the construction thereof for compliance with the approved plans thereof.

(b) The Arkansas Pollution Control and Ecology Commission is given and charged with the following powers and duties:

(1)(A) Promulgation of rules, including water quality standards and the classification of the waters of the state and moratoriums or suspensions of the processing of types or categories of permits, implementing the substantive statutes charged to the division for administration.

(B) In promulgation of such rules, prior to the submittal to public comment and review of any rule or change to any rule that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule on the people of the State of Arkansas, including those entities that will be subject to the rule.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report that shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgation of rules and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules governing administrative procedures for challenging or contesting division actions;

(4) In the case of permitting or grants decisions, provide the right to appeal a permitting or grants decision rendered by the Director of the Division of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, provide the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies or investigations as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the division, provided, however, that the director shall always remain within the plenary authority of the Governor and the Secretary of the Department of Energy and Environment; and

(8) Upon a majority vote, initiate review of any director's decision.

History. Acts 1949, No. 472, [Part 1], § 3; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 11; 1993, No. 165, § 11; 1997, No. 1219, § 5; 1999, No. 1164, § 19; 2019, No. 315, §§ 457, 458; 2019, No. 910, §§ 2480-2483.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b)(1)(A), and made similar changes throughout the section.

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (a) and in (b)(4); substituted "division" for "department" in (b)(1)(A), (b)(3), and (b)(7); and inserted "and the Secretary of the Department of Energy and Environment" in (b)(7).

8-4-202. Rules.

(a) The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Division of Environmental Quality and the commission under this chapter.

(b) Without limiting the generality of this authority, these rules may, among other things, prescribe:

(1) Effluent standards specifying the maximum amounts or concentrations and the physical, thermal, chemical, biological, and radioactive nature of the contaminants that may be discharged into the waters of this state or into publicly owned treatment facilities;

(2) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, including publicly owned treatment facilities and industrial discharges into such facilities, the collection of samples, and the collection, reporting, and retention of data resulting from such monitoring; and

(3) Water quality standards, performance standards, and pretreatment standards.

(c)(1) Any person shall have the right to petition the commission for the issuance, amendment, or repeal of any rule. Within sixty (60) days from the date of the submission of a petition, the commission shall

either institute rulemaking proceedings or give the petitioner written notice denying the petition, together with a written statement setting out the reasons for denial.

(2) In the event the petition is denied, the decision of the commission will be deemed a final order subject to appeal as provided in subdivision (d)(5) of this section.

(3) The record for appeal in a petition denial shall consist of the petition for rulemaking filed with the commission, the commission's written statement setting out the reasons for denial, and any document referenced therein.

(d)(1)(A) Before the adoption, amendment, or repeal of any rule or before suspending the processing of a type or category of permits or the declaration of a moratorium on a type or category of permits, the commission shall give at least thirty (30) days' notice of its intended action.

(B) The notice shall include:

- (i) A statement of the substance of the intended action;
- (ii) A description of the subjects and issues involved; and
- (iii) The time, place, and manner in which interested persons may make comments.

(C) The notice shall be mailed or emailed to all persons who have requested advance notice of rulemaking proceedings.

(D) The notice shall also be published at least two (2) times in newspapers having a general statewide circulation and in the appropriate industry, trade, or professional publications the commission may select.

(2)(A) All interested parties shall be afforded a reasonable opportunity to:

- (i) Submit written data, information, views, opinions, and arguments; and
- (ii) Make oral statements concerning the proposed rule, suspension, or moratorium prior to a decision being rendered by the commission.

(B) All written material, photographs, published material, and electronic media received by the commission shall be preserved and, along with a record of all oral comments made at any public hearing, shall become an element of the record of rulemaking.

(C) Any person who considers himself or herself injured in his or her person, business, or property by final agency action under this section shall be entitled to judicial review of the action under this section.

(3)(A) If, in response to comments, the commission amends a proposed rule to the extent that the rule would have an effect not previously expressed in the notice required by subdivision (d)(1) of this section, the commission shall provide another adequate public notice.

(B) Subdivision (d)(3)(A) of this section shall not, however, require a second public notice if the final rule is a logical outgrowth of the rule proposed in the prior notice.

(4) The commission shall compile and maintain a record of rule-making that shall contain:

(A)(i) A copy of all notices described in this subsection and a concise general statement of the basis and purpose of the proposed rule, which shall include a written explanation of the necessity of the rule and a demonstration that any technical rule or technical standard is based on generally accepted scientific knowledge and engineering practices.

(ii) For any standard or rule that is identical to a regulation promulgated by the United States Environmental Protection Agency, this portion of the record may be satisfied by reference to the Code of Federal Regulations.

(iii) In all other cases, the division must provide its own justification with appropriate references to the scientific and engineering literature or written studies conducted by the division;

(B) Copies of all written material, photographs, published materials, electronic media, and the record of all oral comments received by the commission during the public comment period and hearings; and

(C) A responsive summary that groups public comments into similar categories and explains why the commission accepted or rejected the rationale of each category.

(5)(A) The decisions of the commission with regard to this section are final and may be judicially appealed to the appropriate circuit court as provided in § 8-4-222 within thirty (30) days after filing with the office of the Secretary of State by persons that have standing as set out in subdivision (d)(2) of this section.

(B) The record for review shall consist of a copy of the rule and the record of rulemaking described in subdivision (d)(4) of this section.

(C) Rule changes, suspensions, or moratoria on types of categories of permits adopted by the commission shall be stayed and not take effect during the pendency of the appeal, except as specified in subsection (e) of this section.

(e)(1) If the commission determines that imminent peril to the public health, safety, or welfare requires immediate change in the rules or immediate suspension or moratorium on categories or types of permits, it may, after documenting the facts and reasons, declare an emergency and implement emergency rules, suspensions, or moratoria.

(2) No rule, suspension, or moratorium adopted under an emergency declaration shall be effective for longer than one hundred eighty (180) days.

(3) The imminent loss of federal funding, certification, or authorization for any program administered by the division shall establish a prima facie case of imminent peril to the public health, safety, or welfare.

History. Acts 1949, No. 472, [Part 1], No. 314, § 1; 1997, No. 1219, § 5; 2011, § 3; 1961, No. 120, § 5; 1973, No. 262, No. 195, § 1; 2013, No. 954, § 2; 2013 (1st § 4; A.S.A. 1947, § 82-1904; Acts 1993, Ex. Sess.), No. 4, § 1; 2019, No. 315, No. 163, § 12; 1993, No. 165, § 12; 1997, §§ 459-466; 2019, No. 910, §§ 2484-2486.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (a) and (b); deleted “or regulation” following “rule” in (c)(1) and (d)(1)(A); deleted “regulation” following “rule” in (d)(2)(A)(ii) and (e)(2); substituted “rule” for “regulation” throughout (d)(3)-(5); and deleted “regulations” following “rules” in (e)(1).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (d)(4)(A)(iii) twice and in (e)(3).

8-4-203. Permits generally — Definitions.

(a) The Division of Environmental Quality or its successor is given and charged with the power and duty to issue, continue in effect, revoke, modify, or deny permits, under such conditions as it may prescribe:

(1) To prevent, control, or abate pollution;

(2) For the discharge of sewage, industrial waste, or other wastes into the waters of the state, including the disposal of pollutants into wells; and

(3) For the installation, modification, or operation of disposal systems or any part of them.

(b)(1)(A) The division shall not issue, modify, renew, or transfer a National Pollutant Discharge Elimination System permit or state permit for a nonmunicipal domestic sewage treatment works without the permit applicant first:

(i) Paying the trust fund contribution fee required under subdivision (b)(4) of this section;

(ii) Submitting the assessment required by subdivision (b)(1)(D) of this section; and

(iii) Certifying that the permit applicant has complied with applicable local ordinances and regulations, including without limitation:

(a) Local zoning ordinances;

(b) Local planning authority regulations; and

(c) Local permitting requirements.

(B) As used in this section, “nonmunicipal domestic sewage treatment works” means a device or system operated by an entity other than a city, town, or county that treats, in whole or in part, waste or wastewater from humans or household operations and must continuously operate to protect human health and the environment despite a permittee’s failure to maintain or operate the device or system.

(C) The following are specifically exempted from the requirements of this subsection:

(i) State or federal facilities;

(ii) Schools;

(iii) Universities and colleges;

(iv) Entities that continuously operate due to a connection with a city, town, or county; and

(v) A commercial or industrial entity that treats domestic sewage from its operations and does not accept domestic sewage from other entities or residences.

(D) Each application for the initial permit and any subsequent permit renewal, modification, or transfer for a nonmunicipal domestic sewage treatment works submitted under this section shall be accompanied by an assessment developed by a professional engineer licensed by the state that includes:

(i) A cost estimate for a third party to operate and maintain the nonmunicipal domestic sewage treatment works for five (5) years;

(ii) A list of all necessary capital expenditures, system upgrades, or significant repairs and a milestone schedule for completion within five (5) years; and

(iii) A financial plan that demonstrates to the division's satisfaction the permittee's financial ability to operate and maintain the nonmunicipal domestic sewage treatment works each year for five (5) years.

(E)(i) Except as provided under subdivision (b)(1)(E)(ii) of this section, the division shall not issue, renew, or transfer permit coverage for nonmunicipal domestic sewage treatment works to property owners' associations or homeowners' associations after January 1, 2018.

(ii) A property owners' association or homeowners' association with permit coverage before December 31, 2017, may retain permit coverage if the property owners' association or homeowners' association complies with this section.

(2) Until January 1, 2016, the Arkansas Department of Environmental Quality or the division may reduce or waive the amount of the required financial assurance if the permit applicant can demonstrate to the Arkansas Department of Environmental Quality's or the division's satisfaction that:

(A) For a renewal permit, during the five (5) years preceding the application for a renewal permit, the nonmunicipal domestic sewage treatment works has:

(i) Maintained the nonmunicipal domestic sewage treatment works in continuous operation;

(ii) Maintained the nonmunicipal domestic sewage treatment works in substantial compliance with the existing discharge permit issued by the Arkansas Department of Environmental Quality or the division, which shall be demonstrated by submitting the following:

(a) All discharge monitoring reports;

(b) Evidence that the nonmunicipal domestic sewage treatment works has not exceeded the same permit effluent criteria in any two (2) consecutive monitoring periods during the previous three (3) years;

(c) Evidence that no more than ten percent (10%) of the nonmunicipal domestic sewage treatment works' submitted discharge monitoring reports show effluent violations; and

(d) Evidence that there have not been any administrative or judicial orders entered against the owner or operator for violations of state or federal environmental laws, rules, or regulations or permits

issued by the Arkansas Department of Environmental Quality or the division;

(iii) Maintained the services of a certified wastewater treatment operator, where applicable;

(iv)(a) Remained financially solvent, which shall be demonstrated by either:

(1) The nonmunicipal domestic sewage treatment works' federal tax returns for the five (5) years preceding the application for a renewal permit and a sworn affidavit from a corporate official or other responsible official representing the nonmunicipal domestic sewage treatment works that lists all assets and liabilities for the nonmunicipal domestic sewage treatment works; or

(2) An independent certified public accountant's report on the owner's or operator's independently reviewed financial statements.

(b) The review of financial statements under subdivision (b)(2)(A)(iv)(a)(2) of this section shall be conducted in accordance with the American Institute of Certified Public Accountants' Professional Standards, as they existed on January 1, 2013; and

(v) Operated the nonmunicipal domestic sewage treatment works to prevent the discharge of waterborne pollutants in unacceptable concentrations to the surface waters or groundwater of the state as defined in the permit or as defined in the state's water quality standards; or

(B) For a new permit:

(i) The reduction or waiver is necessary to accommodate important economic or social development in the area of the proposed nonmunicipal domestic sewage treatment works; and

(ii) The applicant has shown a history of financial responsibility and compliance with regulatory requirements.

(3) The division may withdraw a reduction or waiver granted under this subsection at any time if the permittee has a permit violation in three (3) or more consecutive discharge monitoring periods.

(4)(A) A permittee shall pay the trust fund contribution fee determined by the division under this subdivision (b)(4) to the division.

(B)(i) The division shall determine the required initial and annual trust fund contribution fees for each nonmunicipal domestic sewage treatment works based on each nonmunicipal domestic sewage treatment works' design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit and existing and projected number of residential end users.

(ii)(a) The division shall require an initial trust fund contribution fee for each construction permit for a new nonmunicipal domestic sewage treatment works or any modification to an existing nonmunicipal domestic sewage treatment works resulting in an increase in design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit.

(b) The initial trust fund contribution fee required by the division for a new nonmunicipal domestic sewage treatment works is ten

percent (10%) of the estimated cost of construction of the new nonmunicipal domestic sewage treatment works as certified by the engineer of record.

(c) The initial trust fund contribution fee required by the division for modifications to existing nonmunicipal domestic sewage treatment works is ten percent (10%) of the estimated cost of construction for the modification of the nonmunicipal domestic sewage treatment works as certified by the engineer of record.

(d) The division shall reduce the initial trust fund contribution fee if:

(1) The nonmunicipal domestic sewage treatment works is subject to an enforcement action; and

(2) The corrective actions approved by the division would require the nonmunicipal domestic sewage treatment works to make an initial trust fund contribution.

(e) The division shall not require an initial trust fund contribution fee if the design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit is not increased.

(iii) The annual trust fund contribution fee required by the division shall not exceed one thousand dollars (\$1,000) per year for no-discharge permits or five thousand dollars (\$5,000) per year for discharge permits.

(iv)(a) Except as otherwise provided in this subsection, a nonmunicipal domestic sewage treatment works may apply for reimbursement for a maximum of fifty percent (50%) of the costs for capital expenditures necessary to maintain permit compliance made to the nonmunicipal domestic sewage treatment facility in the previous five (5) years if:

(1) Funding is available and appropriated; and

(2) The division has issued that nonmunicipal domestic sewage treatment facility's third permit renewal following its initial trust fund contribution.

(b) Applications for reimbursement under this subdivision (b)(4)(B) shall include a statement certified by a professional engineer licensed by the State of Arkansas identifying the necessary capital costs expended.

(v) Reimbursements from the Nonmunicipal Domestic Sewage Treatment Works Trust Fund are subject to the following restrictions:

(a) Over the lifetime of a nonmunicipal domestic sewage treatment facility, the reimbursement to a nonmunicipal domestic sewage treatment works shall not exceed seventy-five percent (75%) of that nonmunicipal domestic sewage treatment facility's initial trust fund contribution fee;

(b) If the Director of the Division of Environmental Quality determines that a nonmunicipal domestic sewage treatment works is in a state of chronic noncompliance, that nonmunicipal domestic sewage treatment works shall not receive reimbursement from the fund; and

(c) The division shall reimburse a nonmunicipal domestic sewage treatment works based on a pro rata share of each submitted request compared to the total remaining funding available if there are insufficient moneys available in a fiscal year to make reimbursements for all submitted requests under this subsection after:

(1) Deducting the moneys required to make payments to third-party contractors hired by the division from the fund;

(2) Calculating the total remaining funding available; and

(3) Allocating the moneys available for reimbursement to each applicant for reimbursement.

(vi) The Arkansas Pollution Control and Ecology Commission may promulgate rules to implement this subsection.

(C) The trust fund contribution fee required under this subdivision (b)(4):

(i) May be collected in conjunction with any other permit fees;

(ii) Shall be paid before a permit is issued or renewed; and

(iii) Shall be deposited into the fund.

(D) If the total amount in the fund equals or exceeds two million one hundred thousand dollars (\$2,100,000), additional trust fund contribution fees shall not be collected by the division until the total amount of the fund equals or is less than one million five hundred thousand dollars (\$1,500,000), at which time the collection of required trust fund contribution fees shall resume.

(5)(A) A permittee is responsible for ensuring that the required trust fund contribution fee is received by the division by the due date determined by the division.

(B) If the division does not timely receive the required trust fund contribution fees for a nonmunicipal domestic sewage treatment works, the division may initiate procedures to suspend or revoke the permit under which the nonmunicipal domestic sewage treatment works is operated.

(C) A permit applicant's or permit transfer applicant's failure to pay the required trust fund contribution fee assessed by the division under this section is:

(i) Grounds for denying the permit or the permit transfer; and

(ii) A violation of this chapter and subjects the applicant to the penalties described in § 8-4-103.

(6) Sanctions for violating this subsection may include without limitation civil penalties and suspension or revocation of a permit.

(7) The division may seek cost recovery from an owner or operator and reimbursement to the fund of any moneys expended under this section, including without limitation the institution of a civil action against the owner or operator.

(8) The division shall not directly operate or be responsible for the operation of a nonmunicipal domestic sewage treatment works.

(9)(A) The director or the director's designee may send a signed statement to each water service provider that serves all or a portion of the service area of a nonmunicipal domestic sewage treatment

works certifying that the director finds that the nonmunicipal domestic sewage treatment works:

- (i) Is the subject of an enforcement action by the division;
- (ii) Has not complied with the requirements of this section, including payment of the nonmunicipal domestic sewage treatment works trust fund contribution; or
- (iii) Otherwise failed to comply with its permit.

(B) The division shall include a legal description of the service area for the nonmunicipal domestic sewage treatment works with the signed statement under subdivision (b)(9)(A) of this section.

(C) Upon receipt of a signed statement that includes a legal description of the service area for the nonmunicipal domestic sewage treatment works, the water service provider shall not establish new connections or initiate service to existing connections for water service in the service area of the nonmunicipal domestic sewage treatment works as defined by the legal description.

(D) If the director or the director's designated representative finds that the nonmunicipal domestic sewage treatment works is no longer subject to an enforcement action or has remedied the noncompliance that formed the basis for the signed statement under subdivision (b)(9)(A) of this section, the director or the director's designated representative shall send a signed statement of the finding to each water service provider that received the prior statement.

(E) Upon receipt of the signed statement required under subdivision (b)(9)(D) of this section, the water service provider may resume installation of new connections or resume initiation of service to existing connections for water service.

(c)(1)(A)(i) All facilities that engage in land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations shall be closed in a manner that ensures protection of human health and the environment.

(ii) As used in this subsection, "land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations" means land farming through the controlled and repeated application of drilling fluids to a soil surface or the practice of receiving and storing said fluids from offsite for waste management.

(iii) Surface facilities associated with Class II injection wells are specifically excluded from the requirements of this subsection.

(iv) Land applications at the drilling or exploration site that are authorized under any general permit issued by the division are excluded from the requirements of this subsection.

(B) By October 1, 2009, each existing permitted facility regulated under this subsection shall submit to the division the following:

- (i) A plan to close the permitted facility and make any site restoration deemed necessary by the division;
- (ii) A detailed cost estimate to close and restore the permitted facility that meets the requirements of this subsection and is approved by the division; and

(iii) A financial mechanism that demonstrates to the division's satisfaction the permittee's financial ability to ensure adequate closure and any necessary restoration of the permitted facility in accordance with the requirements of this subsection.

(C) The division shall not issue, modify, or renew a permit for facilities regulated under this subsection without the permit applicant first demonstrating to the division's satisfaction the applicant's financial ability to ensure adequate closure and any necessary restoration of the permitted facility in accordance with the requirements of this subsection.

(D)(i) The amount of any financial assurance required under this subsection shall be equal to or greater than the detailed cost estimate for a third party to close the permitted facility in accordance with closure plans approved by the division.

(ii) The detailed cost estimate shall be prepared by an independent professional consultant.

(iii) On or before August 15 of each year, a permittee shall submit to the division for approval a detailed cost estimate to close and restore the permitted facility in accordance with closure plans that have been approved by the division.

(E)(i) For new permits, the applicant shall submit to the division for approval a detailed cost estimate to close and restore the facility based on the proposed operation and capacity of the facility from the date the permit is issued through the following October 1.

(ii) For renewal or modification applications, the permittee shall submit to the division for approval a detailed cost estimate to close and restore the permitted facility based on closure plans that have been approved by the division.

(F)(i) For each permit, the financial assurance mechanism shall be renewed on October 1 of each year.

(ii) For each permit, documentation that the required financial assurance mechanism has been renewed beginning October 1 of that year shall be received by the division by September 15 of each year or the division shall initiate procedures to:

(a) Take possession of the funds guaranteed by the financial assurance mechanism; and

(b)(1) Suspend or revoke the permit under which the facility is operated.

(2) A permit shall remain suspended until a financial assurance mechanism is provided to the division in accordance with this subsection.

(iii) The permittee is responsible for ensuring that documentation of annual renewal is received by the division by its due date.

(2) The permittee or applicant shall demonstrate financial ability to adequately close or restore the land application or storage facility by:

(A) Obtaining insurance that specifically covers closure and restoration costs;

(B) Obtaining a letter of credit;

(C) Obtaining a bond or other surety instrument;
(D) Creating a trust fund or an escrow account;
(E) Combining any of the instruments in subdivisions (c)(2)(A)-(D) of this section; or

(F) Any other financial instrument approved by the director.

(3) A financial instrument required by this subsection shall:

(A) Be posted to the benefit of the division;

(B) Provide that the financial instrument cannot be canceled without sixty (60) days' prior written notice addressed to the division's legal division chief as evidenced by a signed, certified mail with a return receipt request; and

(C) Be reviewed by the division upon receipt of the cancellation notice to determine whether to initiate procedures to revoke or suspend the facility's permit and whether to initiate procedures to take possession of the funds guaranteed by the financial assurance mechanism.

(4) Before the division may release a financial assurance mechanism, the division shall receive a certification by a professional engineer that the permitted facility has been closed and restored in accordance with closure plans that have been approved by the division.

(5) The division is not responsible for the operation, closure, or restoration of a facility regulated under this subsection.

(d)(1) When an application for the issuance of a new permit or a major modification of an existing permit is filed with the division, the division shall cause notice of the application to be published in a newspaper of general circulation in the county in which the proposed facility is to be located.

(2) The notice required by subdivision (d)(1) of this section shall advise that any interested person may request a public hearing on the permit application by giving the division a written request within ten (10) days of the publication of the notice.

(3)(A) If the division determines that a hearing is necessary or desires such a hearing, the division shall schedule a public hearing.

(B)(i) If the division schedules a public hearing, the division shall notify the applicant and all persons who have submitted comments of the date, time, and place of the public hearing.

(ii) The notice shall be provided using one (1) of the following methods based on the contact information available for the applicant or the person and the director's discretion:

(a) First class mail; or

(b) Email.

(e)(1)(A) Whenever the division proposes to grant or deny any permit application, it shall cause notice of its proposed action to be published in either:

(i) A newspaper of general circulation in the county in which the facility that is the subject of the application is located; or

(ii) In the case of a statewide permit, in a newspaper of general circulation in the state.

(B) The notice shall afford any interested party thirty (30) calendar days in which to submit comments on the proposed permit action.

(C)(i) At the conclusion of the public comment period, the division shall provide a final written permitting decision regarding the permit application.

(ii) The final written permitting decision shall be published on the division's website.

(iii) The division shall provide the applicant the final permitting decision using one (1) of the following methods based on the contact information available and the director's discretion:

(a) First class mail; or

(b) Email.

(iv) The division shall provide notice of the final permitting decision to all persons who have submitted comments using one (1) of the following methods based on the contact information available and the director's discretion:

(a) First class mail; or

(b) Email.

(2)(A)(i) The division's final decision shall include a response to each issue raised in any public comments received during the public comment period. The response shall manifest reasoned consideration of the issues raised by the public comments and shall be supported by appropriate legal, scientific, or practical reasons for accepting or rejecting the substance of the comment in the division's permitting decision.

(ii) For the purposes of this section, response to comments by the division should serve the roles of both developing the record for possible judicial review of an individual permitting action and as a record for the public's review of the division's technical and legal interpretations on long-range regulatory issues.

(iii) Nothing in this section, however, shall be construed as limiting the division's authority to raise all relevant issues of regulatory concern upon adjudicatory review of the commission of a particular permitting action.

(B)(i) In the case of any discharge limit, emission limit, environmental standard, analytical method, or monitoring requirements, the record of the proposed action and the response shall include a written explanation of the rationale for the proposal, demonstrating that any technical requirements or standards are based upon generally accepted scientific knowledge and engineering practices.

(ii) For any standard or requirement that is identical to an applicable federal regulation or state rule, this demonstration may be satisfied by reference to the federal regulation or state rule. In all other cases, the division must provide its own justification with appropriate reference to the scientific and engineering literature or written studies conducted by the division.

(f)(1) All costs of publication of notices of applications and notices of proposals to grant permits under this section shall be the responsibility of the applicant.

(2) All costs of publication of notices of proposals to deny a permit under this section shall be the responsibility of the division.

(3) Any moneys received under this subsection shall be classified as refunds to expenditures.

(g) Only those persons that submit comments on the record during the public comment period and the applicant shall have standing to appeal the decision of the division to the commission.

(h)(1) Permits for the discharge of pollutants into the waters of the state or for the prevention of pollution of the waters of the state shall remain freely transferable if the applicant for the transfer:

(A) Notifies the director at least thirty (30) days in advance of the proposed transfer date;

(B) Submits a disclosure statement as required under § 8-1-106;

(C) Provides any replacement financial assurance required under this section; and

(D) Ensures that all past and currently due annual permit fees and the trust fund contribution fees for the nonmunicipal domestic sewage treatment works have been paid.

(2) Only the reasons stated in § 8-1-103(4), § 8-1-106(b)(1), § 8-1-106(c), and this section constitute grounds for denial of a transfer.

(3) The permit is automatically transferred to the new permittee unless the director denies the request within thirty (30) days of the receipt of the disclosure statement.

(i) In the event of voluminous comments, including without limitation a petition, the division may require the designation of a representative to accept any notices required by this section.

(j) The notice provisions of subsections (d) and (e) of this section do not apply to permit transfers or minor modifications of existing permits.

(k) This section in no way restricts local and county government entities from enacting more stringent ordinances regulating nonmunicipal domestic treatment sewage systems in Arkansas.

(l) The commission may promulgate rules to establish a permit-by-rule. A permit-by-rule is subject to the public notice requirements and procedural provisions under § 8-4-202 et seq. but is not subject to the public notice requirements and procedural provisions under this section and §§ 8-4-204 and 8-4-205.

(m)(1)(A)(i) The division may issue general permits under subsection (a) of this section.

(ii) A general permit is a statewide permit for a category of facilities or sources that:

(a) Involve the same or substantially similar types of operations or activities;

(b) Discharge or release the same type of wastes or engage in the same type of disposal practices;

(c) Require the same limitations, operating conditions, or standards;

(d) Require the same or similar monitoring requirements; and

(e) In the opinion of the director, may be regulated under a general permit.

(B)(i) Facilities or sources eligible to construct or operate under a general permit may obtain coverage by submitting a notice of intent to the division.

(ii) The director may require a person who has been granted coverage under a general permit to apply for and obtain an individual permit.

(2)(A) A general permit is subject to the public notice requirements for statewide permits and the procedures under subsection (e) of this section.

(B) The division shall pay the costs of publication of notice of a draft permitting decision to issue a general permit.

(C) General permit coverage is not transferable unless the general permit provides for transfer.

(3)(A)(i) Before the submittal to public comment of a general permit that has not been previously issued, the division shall consider the economic impact and environmental benefit of the general permit and its terms and conditions upon the people of the State of Arkansas, including those entities that may apply for coverage under the general permit.

(ii) This requirement does not apply to general permits or terms or conditions that adopt the language of state laws or rules or federal statutes or regulations without substantive change.

(B) If the terms and conditions of a previously issued general permit are revised upon renewal, the economic impact and environmental benefit of only the proposed changes shall be considered.

(C) A general permit for which costs are specifically prohibited from being considered by state law or rule or federal law or regulation is exempt from the requirements of this subsection.

(D) The division may rely upon readily available information for its consideration of the economic impact and environmental benefit of the general permit and its terms and conditions.

(4)(A) Only those persons that submit comments on the record during the public comment period shall have standing to appeal the decision of the division to the commission.

(B) The final permitting decision of the division on the general permit is subject to a hearing before the commission under §§ 8-4-205, 8-4-212, 8-4-213, 8-4-214, and the administrative procedures promulgated by the commission.

(5)(A)(i) When a general permit includes an expiration date later than July 1, 2012, the Arkansas Department of Environmental Quality or the division shall publish the notice of intent to renew or not renew the general permit at least three hundred sixty-five (365) days before the expiration of the general permit.

(ii) When a general permit includes an expiration date earlier than July 1, 2012, the Arkansas Department of Environmental Quality or the division shall publish the notice of intent to renew or not renew the general permit as soon as reasonably possible.

(B) The Arkansas Department of Environmental Quality or the division shall publish its final permitting decision to renew or not

renew the general permit at least one hundred eighty (180) days before the expiration date of the general permit.

(C) If the general permit expires before the final decision to renew or not renew the general permit, the terms and conditions of the general permit shall remain in effect, and all persons who obtained coverage under the general permit before its expiration shall retain coverage under the general permit until there has been a final permit decision on the general permit.

(D) In the event the Arkansas Department of Environmental Quality or the division makes a decision to not renew the general permit, existing coverage under the general permit shall continue under the terms of the expired permit until a final decision is reached for an individual permit.

(6)(A) If a general permit is appealed and the general permit expires before the final decision by the director or by the commission to renew or not renew the general permit, the terms and conditions of the general permit shall remain in effect.

(B) All persons who obtained coverage under the general permit before its expiration shall retain coverage under the general permit until there has been a final administrative decision on the general permit.

(C) The director shall not approve new coverage under an expired general permit for any facility for which a notice of intent was not filed before expiration of the general permit.

(n)(1) When an application for the issuance of a new permit for a liquid animal waste system or a modification of an existing permit for a liquid animal waste system is filed, the division shall give notice of its proposed action in accordance with subdivision (e)(1)(A) of this section within one hundred twenty (120) days of receipt of the application.

(2)(A) At the conclusion of the public comment period, the division shall announce in writing within sixty (60) days its final decision regarding the permit application in accordance with subdivision (e)(2)(A) of this section.

(B) For a modification that the division considers to be minor in nature, the division shall make its final decision regarding the permit application within thirty (30) days after receipt of the application.

(3) An applicant may waive in writing to the division the timeliness requirement under subdivisions (n)(1) and (2) of this section.

(o)(1) If an application for modification of an existing state permit for a liquid animal waste management system is filed with the division, only those permit conditions subject to the modification are open for review.

(2)(A) Except as provided in subdivision (o)(2)(B) of this section, an existing state permit for a liquid animal waste management system that is in good standing is not subject to review or third-party appeal for siting or location issues that were not raised during the applicable review or appeal period at the time of permit issuance.

(B) Subdivision (o)(2)(A) of this section does not limit the authority of the division to address or enforce a violation of permit conditions or applicable law.

History. Acts 1949, No. 472, [Part 1], § 3; 1961, No. 120, § 4; 1975, No. 743, § 4; 1979, No. 680, § 1; 1981, No. 826, § 1; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 13; 1993, No. 165, § 13; 1995, No. 384, §§ 2, 3, 6-9; 1995, No. 895, § 2; 1997, No. 1219, § 5; 1997, No. 1312, § 1; 1999, No. 229, § 1; 1999, No. 1164, § 20; 2007, No. 832, § 1; 2007, No. 1005, § 2; 2009, No. 369, § 1; 2009, No. 409, § 1; 2011, No. 731, § 1; 2013, No. 402, §§ 1, 2; 2013, No. 1127, § 2; 2015, No. 94, § 1; 2015, No. 575, §§ 2, 3; 2017, No. 501, § 1; 2017, No. 987, §§ 1-3; 2017, No. 1037, § 1; 2017, No. 1057, §§ 1, 2; 2018 (2nd Ex. Sess.), No. 6, § 1; 2018 (2nd Ex. Sess.), No. 10, § 1; 2019, No. 315, §§ 467-470; 2019, No. 910, § 2487.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (b)(4)(B)(vi); inserted “federal” and “or state rule” twice each in the first sentence of (e)(2)(B)(ii); inserted “laws or rules” in (m)(3)(A)(ii); and inserted “law or rule” in (m)(3)(C).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); substituted “division” for “department” throughout the section; substituted “Arkansas Department of Environmental Quality or the Division of Environmental Quality” for “department” in the introductory language of (b)(2); and made similar changes throughout the section.

8-4-204. Permits — Revocation.

The Division of Environmental Quality or its successor is given and charged with the power and duty to revoke, modify, or suspend, in whole or in part, for cause any permit issued under this chapter, including without limitation:

- (1) Violation of any condition of the permit;
- (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
- (3) A change in any applicable regulation or a change in any preexisting condition affecting the nature of the discharge that requires either a temporary or permanent reduction or elimination of the permitted discharge.

History. Acts 1949, No. 472, [Part 1], § 3; 1975, No. 743, § 4; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 14; 1993, No. 165, § 14; 1997, No. 1219, § 5; 1999, No. 1164, § 21; 2019, No. 910, § 2488.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-4-205. Permits — Hearings upon denial, revocation, or modification and other permit actions — Definition.

(a) Any person that is denied a permit by the Director of the Division of Environmental Quality or that has a permit revoked or modified or a request for permit transfer or modification denied shall be afforded an opportunity for a hearing by the Arkansas Pollution Control and Ecology Commission in connection therewith, upon written application made within thirty (30) days after service of notice of the denial, revocation, or modification.

(b)(1) Only those interested persons, other than the applicant, that have submitted comments on the record regarding a proposed permit action during the public comment period shall have standing to request a hearing by the commission in connection therewith, upon written application made within thirty (30) days after the date of the Division of Environmental Quality's final decision regarding the permit action.

(2) No interested party requesting a hearing under this subsection may raise any issue in the hearing that was not raised in the public comments unless the party raising the issue shows good cause why such issue could not, with reasonable diligence, have been discovered and presented during the public comment period. The limitation in this subdivision (b)(2) shall not restrict the issues that may be addressed by the applicant in any appeal.

(3) A request for a hearing shall identify the permit action in question and its date and must include a complete and detailed statement identifying the legal and factual objections to the permit action.

(c)(1)(A) Within thirty (30) days of the date the request for a hearing is filed with the Secretary of the Arkansas Pollution and Ecology Control Commission, a preliminary hearing will be conducted in the name of the commission by the commission's authorized administrative law judge.

(B) Within a reasonable time after the preliminary hearing, the administrative law judge shall enter a written decision determining whether the parties qualify as proper parties under subdivision (b)(1) of this section and whether the request conforms with the requirements under subdivisions (b)(2) and (3) of this section.

(C) A party aggrieved by the decision entered under this subsection may, within ten (10) business days, request review by the commission.

(2)(A) A contested decision and any final recommended decision of the administrative law judge shall be transmitted to the commission.

(B) The commission shall consider the recommended decision of the administrative law judge and shall either affirm the decision in whole or in part or reverse the decision in whole or in part.

(3) At this preliminary hearing, the administrative law judge shall weigh the equities of any request for expedited review and advance the case on the administrative docket as circumstances permit.

(4) The commission shall review the director's decision de novo.

(5) The administrative law judge shall schedule the hearing and other proceedings so that the appeal will be submitted to the commission for final commission action within one hundred twenty (120) days after the preliminary hearing unless the parties mutually agree to a longer period of time or the administrative law judge establishes a longer period of time for just cause.

(6) During the pendency of the appeal to the commission:

(A) The denial of a permit shall stand;

(B) The issuance, modification, or revocation of a permit or that part of a permit that is the subject of the appeal shall be stayed;

(C)(i) Notwithstanding subdivisions (c)(6)(A) and (B) of this section, upon application by a party, the commission may provide for a stay, modify the terms of a stay, or terminate a stay under appropriate circumstances to avoid substantial prejudice to a party.

(ii) As used in subdivision (c)(6)(C)(i) of this section, “substantial prejudice” means that the following will occur to the party seeking a stay, a modification of the terms of a stay, or the termination of a stay if the request is denied:

(a) Actual harm to health; or

(b) Adverse economic impact, including without limitation interruption, curtailment, or deferral of business or increased cost of construction or operation;

(D) Upon application by a party for a stay, to modify the terms of a stay, or to terminate a stay, the Chair of the Arkansas Pollution and Ecology Control Commission shall:

(i) Grant a temporary stay, modify the terms of a stay, or terminate a stay effective until the earlier of the next regularly scheduled commission meeting or the next special meeting called for the purpose of considering the application; or

(ii) Place the application on the agenda for the next regularly scheduled commission meeting or call a special commission meeting for the purpose of considering the application if more than thirty (30) days will pass between the receipt of the application and the next regularly scheduled commission meeting; and

(E) Notwithstanding subdivision (c)(6)(D) of this section, the commission shall render a final decision on an application to provide for a stay, modify the terms of a stay, or terminate a stay within thirty (30) days of receipt of the application.

(7) The decision of the commission is final, and only those persons that are parties to the administrative appeal under this section shall have standing to appeal a permitting decision to circuit court as provided for in §§ 8-4-222 — 8-4-229.

History. Acts 1949, No. 472, [Part 1], § 5; 1973, No. 262, § 7; A.S.A. 1947, § 82-1906; Acts 1991, No. 744, § 4; 1993, No. 163, § 15; 1993, No. 165, § 15; 1995, No. 384, § 10; 1999, No. 1164, § 22; 2013, No. 1021, § 1; 2015, No. 838, § 4; 2019, No. 910, §§ 2489, 2490.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a) and (b)(1).

8-4-206. State water pollution control agency — General authority.

(a) In addition to any other powers which it may have under this chapter or any other legislative act, the Division of Environmental Quality is authorized and empowered to act as the “state water pollution control agency” for the State of Arkansas for the purposes of the Federal Water Pollution Control Act Amendments of 1972.

(b) As the state water pollution control agency, the division may, among other things, approve projects for the construction of disposal systems for the purposes of loans and grants from the United States Environmental Protection Agency or any other federal agency and may take any other action necessary or appropriate to secure for the state the benefits of the Federal Water Pollution Control Act, as amended.

History. Acts 1949, No. 472, [Part 1], § 3; Acts 1973, No. 262, § 5; 1975, No. 743, § 5; A.S.A. 1947, § 82-1904; Acts 1999, No. 1164, § 23; 2019, No. 910, § 2491.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (b).

8-4-207. State water pollution control agency — Powers and duties generally.

Without limiting the generality of the provisions of this chapter or of the powers which the Director of the Division of Environmental Quality and the Arkansas Pollution Control and Ecology Commission may have under this or any other legislative act:

(1)(A) The director is authorized to require conditions in permits issued under this chapter regarding the achievement of effluent limitations based upon the application of such levels of treatment technology and processes as are required under the Federal Water Pollution Control Act, as amended, or any more stringent effluent limitations necessary to meet water quality criteria or toxic standards established pursuant to any state law or rule or federal law or regulation. Such effluent limitations shall be achieved in the shortest reasonable period of time consistent with state law and the Federal Water Pollution Control Act, as amended, and any regulations or guidelines promulgated thereunder.

(B) The director is further authorized to set and revise schedules of compliance and include such schedules within the terms and conditions of the permits and prescribe other terms and conditions for permits issued under this chapter to assure compliance with applicable state and federal effluent limitations and water quality criteria, including requirements concerning recording, reporting, monitoring, entry, inspection, and sampling as provided in this chapter and such other requirements as are consistent with the purposes of this chapter;

(2) The director shall not issue a permit under this chapter if the discharge of any term of the permit would violate the provisions of any federal law or rule or regulation promulgated thereunder, including the duration of such permit;

(3) Permits for publicly owned treatment works shall include as a condition for the permit that the permittee provide information to the director concerning new introductions of pollutants or substantial changes in the volume or character of pollutants, whether sewage, industrial waste, or other wastes are being introduced into such treatment works, and appropriate measures to establish and ensure

compliance by industrial users with any system of user charges required under state law or federal law or any federal regulations or guidelines promulgated thereunder;

(4) The director may apply and enforce toxic effluent standards and pretreatment standards against industrial users of publicly owned treatment works for the introduction into the publicly owned treatment works of sewage, industrial wastes, or other wastes which interfere with, pass through, or otherwise are incompatible with the publicly owned treatment works;

(5) The director and the commission shall ensure public notice, public participation, and an opportunity for public hearing in respect to National Pollutant Discharge Elimination System permit applications and actions related to them in accordance with applicable state law and rules and federal law, rules, and regulations; and

(6)(A)(i) Any records, reports, or information obtained under this chapter and any permits, permit applications, and related documentation shall be available to the public for inspection and copying.

(ii) However, information submitted to the Division of Environmental Quality may be claimed as confidential if its disclosure would divulge trade secrets.

(B) The division shall deny any claim for confidentiality for the name and address of any permit applicant or permittee or for any National Pollutant Discharge Elimination System permit applications, National Pollutant Discharge Elimination System permits, and effluent data.

(C) Information required by National Pollutant Discharge Elimination System application forms, including any information submitted on the forms themselves and any attachments used to supply information required by the forms, shall not be claimed confidential nor afforded this protection.

(D) Any person adversely affected by a determination by the division on a claim of confidentiality may appeal the determination as provided in §§ 8-4-222 and 8-4-223.

History. Acts 1949, No. 472, [Part 1], § 3; 1973, No. 262, § 5; 1975, No. 743, § 5; A.S.A. 1947, § 82-1904; Acts 1987, No. 617, § 1; 1993, No. 163, § 16; 1993, No. 165, § 16; 1999, No. 1164, § 24; 2019, No. 315, §§ 471-473; 2019, No. 693, § 6; 2019, No. 910, §§ 2492-2495.

Amendments. The 2019 amendment by No. 315 inserted “law or rule” in (1)(A); substituted “state law or federal law or any federal regulations” for “state or federal law or any regulations” in (3); and substituted “state law and rules and fed-

eral law, rules, and regulations” for “state and federal law and rules and regulations” in (5).

The 2019 amendment by No. 693, in (4), substituted “may” for “is authorized to”, and “the publicly owned” for “such” twice.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language and (6)(A)(ii); and substituted “division” for “department” in (6)(B) and (6)(D).

8-4-208. State water pollution control agency — Administration of permit program generally.

(a) The Division of Environmental Quality is authorized, subject to the approval of the Governor, to administer on behalf of the state its own permit program for discharges into navigable waters within its jurisdiction in lieu of that of the United States Environmental Protection Agency. The division is also authorized to submit to the Administrator of the United States Environmental Protection Agency for approval a full and complete description of the program which the division proposes to establish and administer under state law, as provided by § 402(b) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1342(b). To that end, the division and the Arkansas Pollution Control and Ecology Commission are vested with all necessary authority and power to meet the requirements of § 402(b) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1342(b), and the guidelines promulgated by the United States Environmental Protection Agency pursuant to § 304(h)(2) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1314(h), to engage in an approved continuing planning process under § 303(e) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1313(e), and to perform any and all acts necessary to carry out the purposes and requirements of the Federal Water Pollution Control Act Amendments of 1972 relating to this state's participation in the National Pollutant Discharge Elimination System established under the Federal Water Pollution Control Act Amendments of 1972, subject to all restrictions contained in the Federal Water Pollution Control Act Amendments of 1972 and guidelines.

(b) The division shall further have the authority to accept a delegation of authority from the Administrator of the United States Environmental Protection Agency under the Federal Water Pollution Control Act Amendments of 1972 and to exercise and enforce the authority delegated.

(c) Any public hearing that may be held by the Director of the Division of Environmental Quality preliminary to acting on a permit application as required by the Federal Water Pollution Control Act Amendments of 1972 and guidelines, unless otherwise designated in the notice of hearing, shall be for informational purposes only and shall not be deemed a hearing before the commission within the meaning of § 8-4-205. No appeal may be taken therefrom.

History. Acts 1949, No. 472, [Part 1], § 3; 1973, No. 262, § 5; 1975, No. 743, § 5; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 17; 1993, No. 165, § 17; 1999, No. 1164, § 25; 2019, No. 910, § 2496.

Amendments. The 2019 amendment

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a) and (c); and substituted "division" for "department" throughout (a) and in (b).

8-4-209. State water pollution control agency — Participation of certain persons prohibited in approval of permit applications.

Any provision of state law to the contrary notwithstanding, no member of the Division of Environmental Quality or the Arkansas Pollution Control and Ecology Commission or other state agency who receives or has during the previous two (2) years received a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit shall participate in the approval of the National Pollutant Discharge Elimination System permit applications or portions thereof.

History. Acts 1949, No. 472, [Part 1], § 2; 1975, No. 743, § 5; A.S.A. 1947, § 82-1904; 2019, No. 910, § 2497. substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

Amendments. The 2019 amendment

8-4-210. Investigations and hearings generally.

(a) The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to conduct such investigations and hold such hearings as it may deem advisable and necessary for the discharge of its duties under this chapter and to authorize any member, employee, or agent appointed by it to conduct such investigations or hold such hearings.

(b) In any such hearing or investigation, any member of the commission or any employee or agent thereto authorized by the commission may administer oaths, examine witnesses, and issue, in the name of the commission, subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearing or investigation.

(c) Witnesses shall receive the same fees and mileage as in civil actions, to be paid out of funds appropriated to the commission.

(d)(1) In case of contumacy or refusal to obey a subpoena issued under this section or refusal to testify, the circuit court of the county where the proceeding is pending or in which the person guilty of the contumacy or refusal to obey is found or resides shall have jurisdiction, upon application of the commission or its authorized member, employee, agent, or administrative law judge, to issue to the person an order requiring him or her to appear and testify or produce evidence, as the case may require.

(2) A failure to obey the order of the court may be punished by the court as contempt.

(e) In accordance with the powers set forth in subsections (a)-(d) of this section, the commission is authorized to conduct adjudicatory hearings providing an aggrieved person with standing a forum for contesting any decision of the Division of Environmental Quality. For the purposes of such hearings, the commission’s jurisdiction shall be

construed as including all regulatory programs vested with the division.

History. Acts 1949, No. 472, [Part 1], § 3; A.S.A. 1947, § 82-1904; Acts 1997, No. 1219, § 5; 2015, No. 838, § 5; 2019, No. 910, § 2498.

Amendments. The 2019 amendment, in (e), substituted “Division of Environ-

mental Quality” for “Arkansas Department of Environmental Quality” in the first sentence and substituted “division” for “department” at the end of the second sentence.

8-4-211. Declaratory orders.

(a) Any permittee or person subject to regulation may petition the Arkansas Pollution Control and Ecology Commission for a declaratory order as to the application of any rule, statute, permit, or order enforced by the Division of Environmental Quality or the commission.

(b) Such petitions shall be processed for adjudicatory review in the same manner as appeals under the procedures prescribed by §§ 8-1-203, 8-4-205, 8-4-212, and 8-4-218 — 8-4-229.

History. Acts 1949, No. 472, [Part 1], § 3; 1961, No. 120, § 3; A.S.A. 1947, § 82-1904; Acts 1995, No. 384, § 4; 1997, No. 1219, § 5; 2019, No. 910, § 2499.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a).

8-4-212. Adjudicatory hearings and orders.

(a) No final order resolving a contested decision of the Division of Environmental Quality shall be issued until the Arkansas Pollution Control and Ecology Commission has provided aggrieved persons that have standing the opportunity for an adjudicatory hearing upon the matter.

(b) Any person that will be directly affected by the order shall have the right to be heard at the hearing, to submit evidence, and to be represented by counsel.

(c) Written notice specifying the time and place of the hearing shall be served by the commission in the manner provided by § 8-4-214 upon all persons known by it to be directly affected by the order, not less than ten (10) days before the date of the hearing.

(d) A copy of any order issued by the commission after the hearing shall also be served upon the persons.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1997, No. 1219, § 5; 2019, No. 910, § 2500.

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a).

Amendments. The 2019 amendment

8-4-213. Conclusiveness of commission actions.

(a) If no appeal is taken from an order, a rule, or other decision of the Arkansas Pollution Control and Ecology Commission as provided in §§ 8-4-222 — 8-4-229, or if the action of the commission is affirmed on

appeal, then the action of the commission in the matter shall be deemed conclusive, and the validity and reasonableness thereof shall not be questioned in any other action or proceeding.

(b) However, this section shall not preclude the authority of the commission to modify or rescind its actions.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1993, No. 163, § 18; 1993, No. 165, § 18; 2019, No. 315, § 474. **Amendments.** The 2019 amendment deleted “a regulation” following “rule” in (a).

8-4-215. Intergovernmental cooperation.

(a) The Division of Environmental Quality or its successor and the Arkansas Pollution Control and Ecology Commission, so far as it is not inconsistent with its duties under the laws of this state, may assist and cooperate with any agency of another state or the United States in any matter relating to water pollution control.

(b)(1) The commission or the division may receive and accept money, property, or services from any person or from any agency described in subsection (a) of this section or from any other source for any water pollution control purpose within the scope of its functions under this chapter.

(2) All moneys so received shall be used for the operation and activities of the commission or division and for no other purposes.

(c)(1) The division or its successor may enter into agreements with the responsible authorities of the United States or other states, subject to approval by the Governor, relative to policies, methods, means, and procedures to be employed to control pollution of any interstate waters and may carry out these agreements by appropriate general and special orders.

(2)(A) This power shall not be deemed to extend to the modification of any agreement with any other state concluded by direct legislative act.

(B) However, unless otherwise provided, the division shall be the agency for the administration and enforcement of any such legislative agreement.

History. Acts 1949, No. 472, [Part 1], § 6; 1973, No. 262, § 8; A.S.A. 1947, § 82-1907; Acts 1997, No. 1219, § 5; 1999, No. 1164, § 26; 2019, No. 910, § 2501. substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” throughout (b) and (c).

Amendments. The 2019 amendment

8-4-216. Information and inspections.

(a) The owner or operator of or any contributor of sewage, industrial wastes, or other wastes to any disposal system or an industrial user of a publicly owned treatment system, when requested by the Director of the Division of Environmental Quality, shall furnish to the Division of Environmental Quality any information that is relevant to the subject

of this chapter. The owner or operator shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, including, when appropriate, biological monitoring methods, sample such effluents, and provide such other information as the director may reasonably require.

(b) The division or any authorized employee or agent of the division may examine and copy any book, papers, records, or memoranda pertaining to the operation of a disposal system.

(c) Whenever it shall be necessary for the purpose of this chapter, the division or any authorized member, employee, or agent of the division may enter upon any public or private property for the purpose of obtaining information or conducting surveys or investigations.

History. Acts 1949, No. 472, [Part 1], § 4; 1973, No. 262, § 6; 1975, No. 743, § 6; A.S.A. 1947, § 82-1905; Acts 1999, No. 1164, § 27; 2019, No. 910, § 2502. substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" twice in (a); and substituted "division" for "department" twice in (b) and twice in (c).

Amendments. The 2019 amendment.

8-4-217. Unlawful actions.

(a) It shall be unlawful for any person to:

(1) Cause pollution, as defined in § 8-4-102, of any of the waters of this state;

(2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;

(3) Violate any provisions of this chapter or of any rule or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Division of Environmental Quality;

(4) Knowingly to make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter;

(5) Falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter; or

(6) Sell, offer or expose for sale, give, or furnish any synthetic detergent or detergent containing any phosphorus, expressed as elemental phosphorus, including synthetic detergents or detergents manufactured for use as laundry or dishwashing detergents within this state from and after January 1, 1994, except as provided below:

(A) Products that may be used, sold, manufactured, or distributed for use or sale regardless of phosphorus content include:

(i) A detergent:

(a) Used in dairy, beverage, or food processing cleaning equipment;

(b) Used in hospitals, veterinary hospitals, clinics, healthcare facilities, or in agricultural production;

(c) Used by industry for metal cleaning or reconditioning;

(d) Manufactured, stored, or distributed for use or sale outside the state;

(e) Used in any laboratory, including a biological laboratory, research facility, chemical laboratory, and engineering laboratory;

(f) Used in a commercial laundry that provides laundry services for a hospital, healthcare facility, or veterinary hospital; or

(g) Used for surface cleaning, appliance cleaning, or specialty home cleaning, and not for dishwashing or laundry;

(ii) A phosphoric acid product, including a sanitizer, brightener, acid cleaner, or metal conditioner; and

(iii) A substance the division excludes from the phosphorus limitations of this section based on a finding that compliance with this section would:

(a) Create a significant hardship on the user; or

(b) Be unreasonable because of the lack of an adequate substitute cleaning agent that could be substituted for the subject cleaning agent without significant cost or effect differences;

(B) A person may use, sell, manufacture, or distribute for use or sale a laundry detergent that contains five-tenths percent (.5%) phosphorus or less that is incidental to manufacturing; and

(C) A person may use, sell, manufacture, or distribute for use or sale a dishwashing detergent that contains eight and seven-tenths percent (8.7%) phosphorus or less by weight.

(b)(1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the division:

(A) To construct, install, modify, or operate any disposal system or any part thereof, or any extension or addition thereto, that will discharge into any of the waters of this state;

(B) To increase in volume or strength any sewage, industrial waste, or other wastes in excess of the permissive discharges specified under any existing permit;

(C) To construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of any wastes into the waters of this state or would otherwise alter the physical, chemical, or biological properties of any waters of this state in any manner not already lawfully authorized;

(D) To construct or use any new outlet for the discharge of any wastes into the waters of this state; or

(E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.

(2) The division may require the submission of such plans, specifications, and other information as it deems relevant in connection with the issuance of disposal permits.

History. Acts 1949, No. 472, [Part 1], § 9; 1975, No. 743, § 7; A.S.A. 1947, § 82-§ 8; 1961, No. 120, § 7; 1973, No. 262, 1908; Acts 1993, No. 454, § 1; 1993, No.

461, § 1; 1997, No. 1219, § 5; 2019, No. 315, § 475; 2019, No. 910, §§ 2503-2506.

Amendments. The 2019 amendment by No. 315 deleted “regulation” following “rule” in (a)(3).

The 2019 amendment by No. 910 substituted “Division of Environmental Qual-

ity” for “Arkansas Department of Environmental Quality” in (a)(3); and substituted “division” for “department” throughout the section.

8-4-218. Violations of chapter, orders, rules, etc. — Hearings — Notice.

(a) Whenever the Division of Environmental Quality or its successor determines that there are reasonable grounds to believe that there has been a violation of any of the provisions of this chapter or any order or rule of the Arkansas Pollution Control and Ecology Commission, it may give written notice to the alleged violator specifying the causes of complaint.

(b) The notice shall require that the matters that are the causes of complaint be corrected or that the alleged violator appear before the commission at a time and place specified in the notice and answer the charges that are the causes of complaint.

(c) The notice shall be served upon the alleged violator in accordance with the provisions of § 8-4-214 not less than ten (10) days before the time set for the hearing.

History. Acts 1949, No. 472, [Part 1], § 5; 1961, No. 120, § 6; A.S.A. 1947, § 82-1906; Acts 1997, No. 1219, § 5; 1999, No. 1164, § 28; 2013, No. 1127, § 3; 2019, No. 315, § 476; 2019, No. 910, § 2507.

Amendments. The 2019 amendment

by No. 315 substituted “or rule” for “rule or regulation” in (a).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a).

8-4-220. Violation of chapter, orders, rules, etc. — Order of division without hearing.

(a) When the Division of Environmental Quality or its successor finds that an emergency exists requiring immediate action to protect the public health or welfare it may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as it deems necessary to meet the emergency.

(b) Notwithstanding the provisions of §§ 8-4-218 and 8-4-219, the order shall be effective immediately.

(c) Any person to which the order is directed shall comply immediately but, on application to the Arkansas Pollution Control and Ecology Commission, shall be afforded a hearing within ten (10) days after receipt of a written request therefor.

(d) On the basis of the hearing, the commission shall continue the order in effect, revoke it, or modify it.

History. Acts 1949, No. 472, [Part 1], § 5; 1961, No. 120, § 6; A.S.A. 1947, § 82-

1906; Acts 1997, No. 1219, § 5; 1999, No. 1164, § 29; 2019, No. 910, § 2508.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a).

8-4-223. Appeals — Notice.

(a)(1) Within thirty (30) days after service of a copy of the final order, rule, or other final determination of the Arkansas Pollution Control and Ecology Commission, the appellant may file a notice of appeal with the circuit court of the county in which the business, industry, municipality, or thing involved is situated.

(2) A copy of the notice of appeal shall be served upon the Secretary of the Arkansas Pollution Control and Ecology Commission by personal delivery or by mail with a return receipt requested within ten (10) days of filing with the circuit court.

(b)(1) The notice of appeal:

(A) Shall state the action of the commission appealed from;

(B) Shall specify the grounds of the appeal, including points of both law and fact that are asserted or questioned by the appellant; and

(C) May contain any other allegations or denials of fact pertinent to the appeal.

(2) The notice of appeal shall state an address within the state at which service of a response to the notice of appeal and other papers in the matter may be made upon the appellant.

(c) Upon filing the notice of appeal with the clerk of the circuit court, the circuit court shall have jurisdiction of the appeal.

(d)(1) Within ten (10) business days of service of the notice of appeal required under subdivision (a)(2) of this section, the owner or operator of the business, industry, municipality, or thing involved may file a motion to transfer the appeal from the circuit court to the Court of Appeals.

(2) Upon the filing of a motion under subdivision (d)(1) of this section, the appeal shall be transferred from the circuit court to the Court of Appeals.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1997, No. 896, § 1; 1997, No. 1219, § 5; 2013, No. 1021, § 3; 2019, No. 315, § 477.

Amendments. The 2019 amendment deleted “regulation” following “rule” in (a)(1).

8-4-225. Appeals — Venue.

Except as provided in § 8-4-223(d), upon written consent of the parties or for cause shown after hearing upon notice to all parties, the venue of an appeal may be changed by order of the circuit court to the circuit court of a county in which the order, rule, or decision appealed from would take effect.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 2013, No. 1021, § 5; 2019, No. 315, § 478.

Amendments. The 2019 amendment deleted “regulation” following “rule”.

8-4-226. Appeal — Response by commission and record.

(a)(1) Within thirty (30) days after service of the notice of appeal on the Secretary of the Arkansas Pollution Control and Ecology Commission, the Arkansas Pollution Control and Ecology Commission shall file with the clerk of the circuit court having jurisdiction of the appeal a response to the notice of appeal and the record upon which the final order, rule, or other final determination complained of was entered.

(2) The thirty-day period for filing a response to the notice of appeal and the record by the commission may be extended by the court for cause shown for not more than an additional sixty (60) days.

(3)(A) The record shall consist of:

(i) A copy of any application or petition, all pleadings, or other material paper whereon the action of the commission appealed from was based;

(ii) A statement of any findings of fact, rulings, or conclusions of law made by the commission;

(iii) A copy of the final order, rule, or other final decision appealed from; and

(iv) All testimony, exhibits, and other evidence submitted to the commission in the case.

(B) The parties to the appeal may stipulate that only a specified portion of the record shall be filed with the circuit court.

(4) A response to the notice of appeal filed by the commission shall consist of any statements, admissions, or denials upon the questions of law or fact raised in the notice of appeal as the commission may deem pertinent.

(b) Within the time allowed for making and filing the response, a copy of the response shall be mailed to or served upon the appellant or the appellant's attorney.

(c)(1) The allegations or new matter in the response shall be deemed to be denied by the appellant unless expressly admitted, and no further pleadings shall be interposed.

(2) Otherwise, the allegations of the notice of appeal and response shall have like effect as the pleadings in a civil action and shall be subject to like proceedings, so far as applicable.

(d) With respect to an appeal that is before the Court of Appeals as the result of a motion to transfer an appeal under § 8-4-223(d), the requirements applicable to the commission's response and the record shall be determined under the Rules of Appellate Procedure — Civil.

History. Acts 1949, No. 472, [Part 1], § 5; 1965, No. 183, § 4; A.S.A. 1947, § 82-1906; Acts 1997, No. 896, § 2; 1997, No. 1219, § 5; 2013, No. 1021, § 6; 2019, No. 315, §§ 479, 480.

Amendments. The 2019 amendment deleted "regulation" following "rule" in (a)(1) and (a)(3)(A)(iii).

8-4-229. Appeals, proceedings, etc. — Presumptions.

(a) In any appeal or other proceeding involving any order, rule, or other decision of the Arkansas Pollution Control and Ecology Commission, the action of the commission shall be prima facie evidence reasonable and valid, and it shall be presumed that all requirements of the law pertaining to the taking thereof have been complied with.

(b) All findings of fact made by the commission shall be prima facie evidence of the matters therein stated.

(c) The burden of proving the contrary of any provision of this section shall rest upon the appellant or other party questioning the action of the commission.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 2019, No. 315, § 481. **Amendments.** The 2019 amendment deleted "regulation" following "rule" in (a).

8-4-230. Temporary variances and interim authority.

(a)(1) Unless otherwise expressly prohibited by federal law, the Director of the Division of Environmental Quality may, for compelling reasons and good cause shown, grant:

(A) A temporary variance from the requirements of a permit issued by the Division of Environmental Quality; or

(B) Interim authority to construct or operate during the application review and permit issuance process.

(2) Such temporary variances or interim authority shall not exceed a period of ninety (90) days, except when a longer period is justified by circumstances beyond the applicant's control. The division may grant a request for an extension of a temporary variance or interim authority at any time prior to the expiration date.

(3) The division may require an initial processing fee of two hundred dollars (\$200) for a request for a temporary variance or an interim authority request. This fee shall not be required for requests for an extension of any temporary variance or interim authority.

(b)(1) In considering a request for a temporary variance under subdivision (a)(1)(A) of this section, the director shall consider:

(A) The environmental and public health effects of the temporary variance;

(B) Any economic advantage obtained by the party requesting the temporary variance over other similarly situated facilities that are operating in accordance with similar permit conditions and that have not requested a temporary variance; and

(C) Whether strict compliance would result in the substantial curtailment or closing down of an existing or proposed business, plant, or operation.

(2) In addition, the director may take into account the following factors in considering a request under subdivision (a)(1) of this section:

(A) Whether strict compliance with permit terms is inappropriate because of conditions beyond the control of the person requesting the temporary variance;

(B) Whether the temporary variance request is prompted by recurrent or avoidable compliance problems;

(C) Whether a review of the operational history of the requesting facility reveals relevant information; and

(D) Whether the public interest will be served by a temporary variance.

(c) When considering any request for interim authority during the application review and permit issuance process pursuant to subdivision (a)(1)(B) of this section, the director may take into account the following factors in addition to the applicable factors of subsection (b) of this section:

(1) Whether the applicable permitting applications were timely and completely submitted;

(2) Whether there has been a delay in the final permitting action caused by conditions beyond the control of the person requesting the interim authority;

(3) Whether contractual or other business obligations will become due before a proper permit can be issued; and

(4) Whether the public interest will be served by construction or operation during the application review and permit issuance process.

(d) After a review of the applicable factors, the director may:

(1) Grant an unconditional variance or interim authority to the requesting party;

(2) Grant a conditional temporary variance or interim authority to the requesting party. Such conditions shall be designed to be protective of human health and the environment and must be clearly stated or referenced in the temporary variance or interim authority document; or

(3) Deny the request for a temporary variance or interim authority. If a denial is issued, the director shall clearly state the reason or reasons for the denial in a written response to the applicant.

(e)(1) The director's decision to grant or deny a temporary variance or interim authority to construct or operate shall be issued within ten (10) days of receipt of the request for the temporary variance or interim authority and shall be publicly noticed in a newspaper of general circulation in the state within five (5) business days of the director's decision. The applicant shall be responsible for the expense of the publication of a decision to grant a temporary variance or interim authority. The division shall be responsible for the expense of the publication of a decision to deny a temporary variance or interim authority.

(2) A person may object to the director's decision within ten (10) business days of the notice.

(3) A temporary variance or interim authority granted by the director is contingent upon the right of any person to object.

(4) An action taken by the applicant in reliance upon the grant of a temporary variance or interim authority during the application review

and permit issuance process is strictly at the applicant's own risk, and an action or expenditure by the applicant during this period does not accrue equities in the applicant's favor.

(5) The public notice requirement under this section shall not apply to the director's decision to grant an extension of a temporary variance or interim authority.

(f) The director may also for compelling reasons or good cause shown revoke or modify the conditions of a temporary variance or interim authority previously granted.

(g)(1) An applicant that is denied a temporary variance or interim authority or that has a temporary variance or interim authority revoked or a third party that submitted timely objections during the application review and permit issuance process described in subsection (e) of this section may appeal the director's final decision to the Arkansas Pollution Control and Ecology Commission upon written request made within ten (10) days after notice of the director's decision.

(2)(A) Unless otherwise agreed to by the party requesting review of the director's decision, an appeal under subdivision (g)(1) of this section shall be considered by the commission at the next regularly scheduled commission meeting following submission of the written request.

(B) However:

(i) The decision of the director shall remain in effect during the appeal;

(ii) The commission's review shall be completed as expeditiously as possible; and

(iii) A final decision shall be issued by the commission within thirty (30) days unless all parties agree to extend the review time.

(C)(i) The commission may affirm, amend, modify, or revoke the director's final decision.

(ii) An affirmation of the director's final decision shall be based on the determination by the commission that the:

(a) Director adequately considered all relevant and applicable factors under subsections (b) and (c) of this section in arriving at the final decision; and

(b) Public interest will be served by the affirmation of the director's final decision.

(iii) An amendment, modification, or revocation of the director's final decision shall be based on a determination by the commission that the:

(a) Director's final decision was unduly burdensome, impractical, or unreasonable given the circumstances;

(b) Director failed to adequately consider the applicable factors under subsections (b) and (c) of this section; or

(c) Public interest will be served by the amendment, modification, or revocation of the director's final decision.

(h) A party that submits an objection to the director's decision under subdivision (e)(2) of this section and is aggrieved by a commission

decision on a request for a temporary variance or interim authority may appeal as provided by applicable law.

History. Acts 1995, No. 943, § 1; 1999, No. 147, § 1; 2013, No. 1021, §§ 8-10; 2019, No. 910, §§ 2509, 2510.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a)(1) and in (a)(1)(A); and substituted “division” for “department” in (a)(2), (a)(3), and (e)(1).

8-4-231. Effectiveness of regulations, rules, or orders.

This act shall not be construed as impairing the continued effectiveness of any regulations, rules, or orders promulgated or issued by the Arkansas Pollution Control and Ecology Commission prior to March 31, 1999. Nor shall this act be construed as extinguishing or otherwise affecting the unexpired terms of any current members of the commission.

History. Acts 1997, No. 1219, § 10; 2019, No. 315, § 482.

inserted “rules” in the section heading and in the section.

Amendments. The 2019 amendment

8-4-232. Nutrient water quality trading programs — Definition.

(a) As used in this section, “nutrient” means a substance assimilated by an organism that promotes growth and replacement of cellular constituents, including without limitation nitrogen, phosphorus, and carbon.

(b)(1) The Arkansas Pollution Control and Ecology Commission may adopt rules that specify requirements, standards, and procedures governing the establishment and implementation of nutrient water quality trading programs, including without limitation program scope, eligibility, and threshold treatment requirements.

(2) The nutrient water quality trading programs may include without limitation the following:

(A) The establishment and regulation of nutrient water quality trading exchanges;

(B) The establishment and regulation of nutrient water quality compliance associations;

(C) The authorization and regulation of nutrient water quality trading credits;

(D) The authorization and regulation of nutrient water quality offsets; and

(E)(i) The establishment of a schedule of user fees to be collected by the Division of Environmental Quality from persons or entities applying for approval of, generating, or utilizing nutrient water quality trades or offsets to comply with permit limits.

(ii) The user fees shall be based on a record calculating the reasonable costs to the division of evaluating, implementing, and enforcing each nutrient water quality trading, credit, or offset program.

(c) Under rules adopted by the commission under subsection (b) of this section, the division may:

(1) Include terms and conditions in any appropriate permit that allow the eligible permit holder to use water quality trading arrangements such as water quality trading credits and water quality offsets as a means for complying with appropriate nutrient effluent limitations or conditions contained in the permit; and

(2) Issue permits to eligible compliance associations as a means for multiple eligible permit holders to collectively satisfy their aggregate permit limits for one (1) or more appropriate nutrient water quality parameters.

(d) A nutrient water quality trading program or arrangement established under this section shall provide that a decision to participate in the nutrient water quality trading program or arrangement is a matter of voluntary choice on the part of each participant in the nutrient water quality trading program or arrangement.

History. Acts 2015, No. 335, § 2; 2019, No. 315, §§ 483, 484; 2019, No. 668, § 1; 2019, No. 910, §§ 2511, 2512.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (b)(1).

The 2019 amendment by No. 668 inserted “applying for approval of, generating, or” in (b)(2)(E)(i); and inserted “evaluating” in (b)(2)(E)(ii).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (b)(2)(E)(i); and substituted “division” for “department” in (b)(2)(E)(ii) and the introductory language of (c).

8-4-233. Nutrient Water Quality Trading Advisory Panel — Creation — Members — Duties.

(a) The Nutrient Water Quality Trading Advisory Panel is created, consisting of nine (9) members as follows:

(1) One (1) member appointed by the President Pro Tempore of the Senate;

(2) One (1) member appointed by the Speaker of the House of Representatives; and

(3) Seven (7) members appointed by the Governor as follows:

(A) One (1) member to represent agricultural interests;

(B) One (1) member to represent forestry interests;

(C) One (1) member to represent municipal wastewater treatment facility interests;

(D) One (1) member to represent public drinking water supply interests;

(E) One (1) member to represent the interests of industries that hold point source wastewater discharge permits; and

(F) Two (2) members to represent the interests of environmental organizations regarding water quality.

(b)(1) A member shall serve a term of two (2) years or until a successor is appointed.

(2) A member may serve successive terms without limitation.

(3) If a vacancy occurs, the officer who made the original appointment for that position shall appoint a person who represents the same constituency as the member being replaced.

(c)(1) A majority of the members shall constitute a quorum for the transaction of business.

(2) Meetings may be conducted with members participating via telephonic or other electronic conferencing methods.

(d)(1) The panel shall elect a chair and vice chair.

(2) The panel may adopt rules relating to the conduct of its meetings.

(e) Members shall serve without compensation but may be reimbursed for expenses in accordance with § 25-16-902, if funds are available.

(f) The Division of Environmental Quality shall provide meeting space and administrative services for the panel.

(g) The panel may:

(1) Advise the division and the Arkansas Natural Resources Commission regarding the desirability, design, and operation of nutrient water quality trading programs; and

(2) Advise the Arkansas Pollution Control and Ecology Commission and the Arkansas Natural Resources Commission regarding the promulgation of rules involving nutrient water quality trading programs.

(h) The Arkansas Pollution Control and Ecology Commission shall not initiate a rulemaking proceeding to adopt a rule that authorizes or governs nutrient water quality trading unless:

(1) The proposed rule has been recommended by the panel; or

(2) A copy of the proposed rule has been delivered to the panel at least sixty (60) calendar days before the date the request to initiate the rulemaking is filed with the Arkansas Pollution Control and Ecology Commission.

(i) Subsection (h) of this section does not limit the authority of the Arkansas Pollution Control and Ecology Commission to:

(1) Alter a proposed rule at any time during the rulemaking proceeding; or

(2) Initiate a rulemaking proceeding if:

(A) The members of the panel have not been appointed; or

(B) The panel lacks an actively serving quorum.

History. Acts 2015, No. 335, § 2; 2019, No. 315, §§ 485, 486; 2019, No. 910, §§ 2513, 2514.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (g)(2); and substituted “rule” for “regulation” throughout (h), and in (i)(1).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (f); and substituted “division” for “department” in (g)(1).

8-4-234. Short-term activity authorization.

(a)(1) The Director of the Division of Environmental Quality may authorize short-term activities that have potential to affect compliance with Arkansas water quality standards if:

(A) The short-term activity is essential to the protection or promotion of the public interest; and

(B) No permanent or long-term impairment of beneficial uses is likely to result from the short-term activity.

(2) Short-term activities eligible for authorization include without limitation:

(A) Wastewater treatment facility maintenance;

(B) Fish eradication projects;

(C) Mosquito abatement projects;

(D) Algae and weed control projects;

(E) Dredge and fill projects;

(F) Construction activities; or

(G) Activities that result in overall enhancement or maintenance of beneficial uses.

(b)(1) The Division of Environmental Quality may collect a short-term activity authorization fee.

(2) The short-term activity authorization fee shall not exceed two hundred dollars (\$200) for each stream crossing, in-stream activity, or other eligible activity under subdivision (a)(2) of this section at each site identified in the application.

(3) The Arkansas Pollution Control and Ecology Commission may establish a fee schedule for short-term activity authorization fees imposed on a state agency, board, or commission or municipality, city, or county for a short-term activity not covered under subsection (c) of this section to include without limitation:

(A) Routine maintenance; or

(B) Road construction.

(4)(A) The division shall enter into an agreement with a state agency, board, or commission or municipality, city, or county that creates an alternative payment structure in lieu of short-term activity authorization fees authorized under subdivision (b)(2) of this section.

(B) An agreement entered into under subdivision (b)(4)(A) of this section shall include:

(i) A provision regarding waiver of short-term activity authorization fees under this section; and

(ii) A process under which the division provides notice to the state agency, board, or commission or municipality, city, or county of planned actions under this section that affect the state agency, board, or commission or municipality, city, or county.

(5) The division shall waive twenty-five percent (25%) of a short-term activity authorization fee assessed under this section to a state agency, board, or commission or municipality, city, or county in a fiscal year.

(c)(1) At the request of a state agency, board, or commission or municipality, city, or county, the director shall waive the short-term activity authorization fee under subsection (b) of this section to facilitate emergency activity limited to the following:

(A) Storm debris removal necessary to prevent damage to a bridge, road, or other structure;

(B) Emergency bridge maintenance or repair; or

(C) Emergency road maintenance or repair.

(2) A state agency, board, or commission or municipality, city, or county that submits a request for a waiver of the short-term activity authorization fee under subdivision (c)(1) of this section shall provide the division:

(A) Notice by phone or email before commencing any in-stream activity;

(B) A written request for waiver of the short-term activity authorization fee that includes:

(i) A request that the short-term activity fee be waived; and

(ii) A statement that describes the emergency conditions that require the short-term activity; and

(C) Written notice of completion, including detailed information concerning all in-stream activity.

(d) The director shall determine the necessary conditions for the authorization under this section.

(e) This section does not supersede existing state or federal permitting processes or requirements.

(f) The Arkansas Pollution Control and Ecology Commission may promulgate rules for the administration of this section.

History. Acts 2017, No. 585, § 1; 2019, No. 315, § 487; 2019, No. 693, § 7; 2019, No. 910, §§ 2515-2520.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (f).

The 2019 amendment by No. 693, in (b)(1), deleted “processing fee for a” preceding “short-term” and added “fee”; and inserted “short-term activity authorization” in (4)(A), (4)(B)(i), and (5).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a) and in (b)(1); and substituted “division” for “department” throughout (b) and in the introductory language of (c)(2).

SUBCHAPTER 3 — AIR POLLUTION

SECTION.

8-4-303. Definitions.

8-4-305. Exceptions.

8-4-307. Private rights unchanged.

8-4-308. Industrial secrets confidential.

8-4-309. Construction limited — Exception.

8-4-310. Unlawful actions.

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8-4-314. Compliance Advisory Panel — Small Business Stationary

SECTION.

Source Technical and Environmental Compliance Assistance Program — Marketing Recyclables Program.

8-4-316. Purpose — Open burning of vegetative storm debris.

8-4-317. State implementation plans generally.

8-4-318. National Ambient Air Quality Standards implementation.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-4-303. Definitions.

As used in this subchapter:

(1) “Air-cleaning device” means any method, process, or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere;

(2) “Air contaminant” means any solid, liquid, gas, or vapor or any combination thereof;

(3) “Air contamination” means the presence in the outdoor atmosphere of one (1) or more air contaminants that contribute to a condition of air pollution;

(4) “Air contamination source” means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who owns or operates the building, premises, or other property in, at, or on which such source is located or the facility, equipment, or other property by which the emission is caused or from which the emission comes;

(5) “Air pollution” means the presence in the outdoor atmosphere of one (1) or more air contaminants in quantities, of characteristics, and of a duration that are materially injurious or can be reasonably expected to become materially injurious to human, plant, or animal life or to property, or that unreasonably interfere with enjoyment of life or use of property throughout the state or throughout the area of the state as shall be affected thereby;

(6) “Area of the state” means any city or county, or portion thereof, or other substantial geographical area of the state as may be designated by the Arkansas Pollution Control and Ecology Commission;

(7) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(8) [Repealed.]

(9) [Repealed.]

(10) “Major source construction” means the construction of a new major stationary source or a major modification of an existing major stationary source as the terms “major stationary source” and “major modification” are defined in 40 C.F.R. § 51.165, if applicable, or 40 C.F.R. § 51.166, as they existed on July 1, 2012;

(11) “NAAQS state implementation plan” means a state implementation plan that specifies measures to be used in the implementation of the state’s duties under 42 U.S.C. § 7410, for the attainment and maintenance of a specified National Ambient Air Quality Standard;

(12) “National Ambient Air Quality Standard” or “NAAQS” means a national primary or secondary ambient air quality standard established under Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., and 40 C.F.R. Part 50;

(13) “Person” means any individual, partnership, firm, company, public or private corporation, association, joint-stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state, or any other legal entity whatever that is recognized by law as the subject of rights and duties; and

(14) “State implementation plan” means a plan that specifies measures to be used in the implementation of the state’s duties under the Clean Air Act, 42 U.S.C. § 7401 et seq., and that is developed by the division and submitted to the United States Environmental Protection Agency for review and approval.

History. Acts 1949, No. 472, [Part 2], § 3, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1933; Acts 1997, No. 1219, § 6; 1999, No. 1164, § 30; 2013, No. 1302, § 1; 2017, No. 455, § 1; 2019, No. 910, §§ 2521, 2522.

Amendments. The 2019 amendment repealed (8) and (9); and substituted “division” for “department” in (14).

8-4-305. Exceptions.

The provisions of this subchapter do not apply to:

- (1) Agricultural operations in the growing or harvesting of crops and the raising of fowl or animals;
- (2) Use of equipment in agricultural operations in the growing of crops or the raising of fowl or animals;
- (3) Barbecue equipment or outdoor fireplaces used in connection with any residence;
- (4) Land clearing operations or land grading;
- (5) Road construction operations and the use of mobile and portable equipment and machinery incident thereto;
- (6) Incinerators and heating equipment in or used in connection with residences used exclusively as dwellings for not more than four (4) families;
- (7) Fires set or permitted by any public officer, board, council, or commission when the fire is set or permission to burn is given in the performance of the duty of the public officer, board, council, or commission for the purpose of weed abatement, the prevention or elimination of a fire hazard, or the instruction of employees in the methods of fire fighting, which is necessary in the opinion of the public officer, board, council, or commission, or from fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction; or

(8)(A) Unless prohibited by municipal or county ordinance, open fires used at a construction site only for the purpose of warming persons on the site during cold weather.

(B) Such fires:

(i) Shall be fueled only by wood or wood products;

(ii) Must be controlled to the extent necessary to prevent a fire hazard or local nuisance; and

(iii)(a) Must be confined within a container made of nonflammable material.

(b) The container shall not exceed thirty inches (30") in width and thirty inches (30") in length.

History. Acts 1949, No. 472, [Part 2], § 4, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1934; Acts 1997, No. 259, § 1; 2019, No. 693, § 8.

Amendments. The 2019 amendment substituted “public officer, board, council, or commission” for “officer” twice in (7).

8-4-306. Political subdivisions preempted — Exception.

RESEARCH REFERENCES

ALR. Preemption by Clean Air Act of State Common-Law Claims, 18 A.L.R.7th Art. 5 (2018).

8-4-307. Private rights unchanged.

(a) Persons other than the state or the Division of Environmental Quality shall not acquire actionable right by virtue of this subchapter. The basis for proceedings that result from violation of any standard or rule promulgated by the Arkansas Pollution Control and Ecology Commission shall inure solely to and shall be for the benefit of the people of the state generally, and it is not intended to create in any way new rights or to enlarge existing rights or to abrogate existing private rights.

(b) A determination by the division that air pollution or air contamination exists or that any standard or rule has been violated, whether or not a proceeding or action is brought by the state, shall not create, by reason thereof, any presumption of law or finding of fact that shall inure to or be for the benefit of any person other than the state.

History. Acts 1949, No. 472, [Part 2], § 14, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1943; Acts 1997, No. 1219, § 6; 2019, No. 315, § 488; 2019, No. 910, § 2523.

Amendments. The 2019 amendment by No. 315 substituted “or rule” for “rule or regulation” in (a) and (b).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (b).

8-4-308. Industrial secrets confidential.

(a)(1)(A) Any information that constitutes a trade secret under § 4-75-601 et seq. that is obtained by the employees of the Department of Energy and Environment, the Division of Environmental Quality, or the Arkansas Pollution Control and Ecology Commission in the administration of this chapter shall be kept confidential, except for emission data that is submitted to the state, local agency, or the United States Environmental Protection Agency, which is otherwise obtained by any of those agencies pursuant to the Clean Air Act.

(B) Only such emission data is to be publicly available.

(2)(A) The manner and rate of operation of the source, if such information is a trade secret, shall be kept confidential.

(B) Provided, that the identity, amount, frequency, and concentration of the emissions is publicly available.

(b) Any violation of this section is a misdemeanor punishable under § 8-4-103.

History. Acts 1949, No. 472, [Part 2], § 7, as added by Acts 1965, No. 183, § 7; 1983, No. 657, § 1; 1985, No. 763, § 1; A.S.A. 1947, § 82-1937; Acts 1995, No. 907, § 1; 1997, No. 1219, § 6; 2019, No. 693, § 9; 2019, No. 910, § 2524.

Amendments. The 2019 amendment by No. 693 substituted “is a misdemeanor punishable under § 8-4-103” for “shall be unlawful and constitutes a misdemeanor” in (b).

The 2019 amendment by No. 910, in (a)(1)(A), substituted “employees of the Department of Energy and Environment, the Division of Environmental Quality” for “Arkansas Department of Environmental Quality”, and deleted “or its employees” following “Arkansas Pollution Control and Ecology Commission”.

8-4-309. Construction limited — Exception.

(a) Nothing contained in this subchapter shall be construed as amending or repealing § 20-21-201 et seq. concerning the control of radiation or as granting to the Division of Environmental Quality or the Arkansas Pollution Control and Ecology Commission any jurisdiction or authority with respect to air conditions existing solely within the property boundaries of any plant, works, or shop or with respect to employer-employee relationships as to health and safety hazards.

(b) Notwithstanding the preceding limitation, the division and the commission shall have jurisdiction and authority over air conditions associated with the removal, encapsulation, enclosure, transportation, or disposal of asbestos-containing material regardless of whether such removal, encapsulation, enclosure, transportation, or disposal is conducted within the property boundaries of any plant, works, or shop.

History. Acts 1949, No. 472, [Part 2], § 13, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1942; Acts 1989, No. 559, § 1; 1997, No. 1219, § 6; 2019, No. 910, § 2525.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (b).

8-4-310. Unlawful actions.

(a) It is a misdemeanor punishable under § 8-4-103:

(1) To knowingly cause air pollution as defined in § 8-4-303;

(2) To construct, install, use, or operate any source capable of emitting air contaminants without having first obtained a permit to do so, if required by rule of the Arkansas Pollution Control and Ecology Commission, or to do so contrary to the provisions of any permit issued by the Division of Environmental Quality or after any such permit has been suspended or revoked; or

(3) To violate any rule or order of the commission issued pursuant to this chapter.

(b) The liabilities imposed for violation of subdivisions (a)(1)-(3) of this section or any other provision of this chapter shall not apply with respect to any unintended violation caused by war, strike, riot, or other catastrophe, or accidental breakdown of equipment if promptly repaired.

History. Acts 1949, No. 472, [Part 2], § 8, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1938; Acts 1997, No. 1219, § 6; 2019, No. 315, § 489; 2019, No. 693, § 10; 2019, No. 910, § 2526.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “the regulations” in (a)(2); and deleted “regulation” following “rule” in (a)(3).

The 2019 amendment by No. 693 substituted “is a misdemeanor punishable under § 8-4-103” for “shall be unlawful and constitute a misdemeanor” in the introductory language of (a).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(2).

8-4-311. Powers generally.

(a) The Division of Environmental Quality or its successor shall have the power to:

(1) Develop and effectuate a comprehensive program for the prevention and control of all sources of pollution of the air of this state;

(2) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the United States Government, and with affected groups in the furtherance of the purposes of this subchapter;

(3) Encourage and conduct studies, investigations, and research relating to air pollution and its causes, prevention, control, and abatement as it may deem advisable and necessary;

(4) Collect and disseminate information relative to air pollution and its prevention and control;

(5) Consider complaints and make investigations;

(6) Encourage voluntary cooperation by the people, municipalities, counties, industries, and others in preserving and restoring the purity of the air within the state;

(7) Administer and enforce all laws and rules relating to pollution of the air;

(8) Represent the state in all matters pertaining to plans, procedures, or negotiations for interstate compacts in relation to air pollution control;

(9)(A) Cooperate with and receive moneys from the United States Government or any other source for the study and control of air pollution.

(B) The division is designated as the official state air pollution control agency for such purposes;

(10) Make, issue, modify, revoke, and enforce orders prohibiting, controlling, or abating air pollution, and requiring the adoption of remedial measures to prevent, control, or abate air pollution;

(11) Institute court proceedings to compel compliance with the provisions of this chapter and rules and orders issued pursuant to this chapter;

(12) Exercise all of the powers in the control of air pollution granted to the division for the control of water pollution under §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229; and

(13) Develop and implement state implementation plans provided that the Arkansas Pollution Control and Ecology Commission shall retain all powers and duties regarding promulgation of rules under this chapter.

(b) The commission shall have the power to:

(1)(A) Promulgate rules for implementing the substantive statutes charged to the division for administration.

(B) In promulgation of such rules, prior to the submittal to public comment and review of any rule or change to any rule that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule on the people of the State of Arkansas, including those entities that will be subject to the rule.

(C) The commission shall promptly initiate rulemaking to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report that shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent rule;

(2) Promulgate rules and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgate rules governing administrative procedures for challenging or contesting division actions;

(4) In the case of permitting or grants decisions, provide the right to appeal a permitting or grants decision rendered by the Director of the Division of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, provide the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the division, provided, however, that the director shall always remain within the plenary authority of the Governor and the Secretary of the Department of Energy and Environment;

(8) Upon a majority vote, initiate review of any director's decision;

(9) Adopt, after notice and public hearing, reasonable and nondiscriminatory rules requiring the registration of and the filing of reports by persons engaged in operations that may result in air pollution;

(10)(A) Adopt, after notice and public hearing, reasonable and non-discriminatory rules, including requiring a permit or other regulatory authorization from the division, before any equipment causing the issuance of air contaminants may be built, erected, altered, replaced, used, or operated, except in the case of repairs or maintenance of equipment for which a permit has been previously used, and revoke or modify any permit issued under this chapter or deny any permit when it is necessary, in the opinion of the division, to prevent, control, or abate air pollution.

(B) A permit shall be issued for the operation or use of any equipment or any facility in existence upon the effective date of any rule requiring a permit if proper application is made for the permit.

(C) No such permit shall be modified or revoked without prior notice and hearing as provided in this section.

(D) Any person that is denied a permit by the division or that has such permit revoked or modified shall be afforded an opportunity for a hearing in connection therewith upon written application made within thirty (30) days after service of notice of such denial, revocation, or modification.

(E) The operation of any existing equipment or facility for which a proper permit application has been made shall not be interrupted pending final action thereon.

(F)(i) An applicant or permit holder that has had a complete application for a permit or for a modification of a permit pending longer than the time specified in the state rules promulgated pursuant to Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. § 7661 et seq., or any person that participated in the public participation process, and any other person that could obtain judicial review of such actions under state laws, may petition the commission for relief from division inaction.

(ii) The commission will either deny or grant the petition within forty-five (45) days of its submittal.

(iii) For the purposes of judicial review, either a commission denial or the failure of the division to render a final decision within thirty (30) days after the commission has granted a petition shall constitute final agency action;

(11)(A) Establish through its rulemaking authority, either alone or in conjunction with the appropriate state or local agencies, a system for the banking and trading of air emissions designed to maintain both the state's attainment status with the national ambient air quality standards mandated by the Clean Air Act and the overall air quality of the state.

(B) The commission may consider differential valuation of emission credits as necessary to achieve primary and secondary national ambient air quality standards, and may consider establishing credits for air pollutants other than those designated as criteria air pollutants by the United States Environmental Protection Agency.

(C) Any rule proposed pursuant to this authorization shall be reported to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor prior to its final promulgation; and

(12) In the case of a state implementation plan, provide the right to appeal a final decision rendered by the director or his or her delegate under § 8-4-317.

History. Acts 1949, No. 472, [Part 2], § 5, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1935; Acts 1993, No. 994, § 1; 1995, No. 895, § 4; 1997, No. 179, § 1; 1997, No. 1219, § 6; 1999, No. 1164, § 31; 2013, No. 1302, §§ 2, 3; 2019, No. 315, §§ 490-499; 2019, No. 910, §§ 2527-2536.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a)(7); deleted "regulations" fol-

lowing "rules" in (a)(11); and made similar changes throughout the section.

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (a) and in (b)(4); substituted "division" for "department" throughout the section; and added "and the Secretary of the Department of Energy and Environment" in (b)(7).

8-4-312. Factors in exercise of powers.

In exercising their powers and responsibilities under this chapter, the Division of Environmental Quality and the Arkansas Pollution Control and Ecology Commission shall take into account and give consideration to the following factors:

(1) The quantity and characteristics of air contaminants and the duration of their presence in the atmosphere that may cause air pollution in a particular area of the state;

(2) Existing physical conditions and topography;

(3) Prevailing wind directions and velocities;

(4) Temperatures and temperature-inversion periods, humidity, and other atmospheric conditions;

(5) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture, or sunlight;

(6) The predominant character of development of the area of the state such as residential, highly developed industrial, commercial, or other characteristics;

(7) Availability of air-cleaning devices;

(8) Economic feasibility of air-cleaning devices;

(9) Effect on normal human health of particular air contaminants;

(10) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

(11) The extent of danger to property in the area reasonably to be expected from any particular air contaminant;

(12) Interference with reasonable enjoyment of life by persons in the area and conduct of established enterprises that can reasonably be expected from air contaminants;

(13) The volume of air contaminants emitted from a particular class of air contamination sources;

(14) The economic and industrial development of the state and the social and economic value of the air contamination sources;

(15) The maintenance of public enjoyment of the state's natural resources; and

(16) Other factors that the division or the commission may find applicable.

History. Acts 1949, No. 472, [Part 2], § 6, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1936; Acts 1997, No. 1219, § 6; 2019, No. 910, §§ 2537, 2538.

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language; and substituted "division" for "department" in (16).

Amendments. The 2019 amendment

8-4-313. Variance from rules or general orders.

(a)(1) The Arkansas Pollution Control and Ecology Commission may grant specific variances from the particular requirements of any rule or general order to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with the rule or general order is inappropriate because of conditions beyond the control of the person granted the variance or because of special circumstances that would render strict compliance unreasonable, unduly burdensome, or impractical due to special physical conditions or causes or because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation or because no alternative facility or method of handling is yet available.

(2) Variances may be limited in time.

(3) In determining whether or not a variance shall be granted, the commission shall weigh the equities involved and the relative advantages and disadvantages to the residents and the occupation and activity affected.

(b)(1) Any person seeking a variance shall do so by filing a petition for a variance with the Director of the Division of Environmental Quality.

(2)(A) The director shall promptly investigate the petition and make a recommendation to the commission as to the disposition thereof.

(B)(i) If the recommendation is against the granting of the variance, a hearing shall be held thereon after not less than ten (10) days, prior to notice to the petitioner.

(ii) If the recommendation of the director is for the granting of a variance, the commission may do so without a hearing. However, upon the petition of any person aggrieved by the granting of a variance, a public hearing shall be held.

(c)(1) A variance granted may be revoked or modified by the commission after a public hearing held upon not less than ten (10) days' prior notice.

(2) The notice shall be served upon all persons known to the commission that will be subjected to greater restrictions if the variance is revoked or modified, that are likely to be affected, or that have filed with the commission a written request for such notification.

History. Acts 1949, No. 472, [Part 2], § 9, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1939; Acts 1997, No. 1219, § 6; 2019, No. 315, § 500; 2019, No. 910, § 2539. by No. 315 deleted "regulation" following "rule" twice in (a)(1). The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b)(1).

Amendments. The 2019 amendment

8-4-314. Compliance Advisory Panel — Small Business Stationary Source Technical and Environmental Compliance Assistance Program — Marketing Recyclables Program.

(a) There is created a Compliance Advisory Panel composed of nine (9) individuals.

(b) The panel shall consist of:

(1) Two (2) members appointed by the Governor to represent the general public who are not:

(A) Owners or representatives of owners of small business stationary sources; or

(B) Owners or representatives of owners of a recycling company or the marketing and recyclable community;

(2) Three (3) members selected by the Speaker of the House of Representatives:

(A) One (1) member who is an owner or who represents an owner of small business stationary sources; and

(B) Two (2) members who are owners or representatives of a small business recycling company or the marketing and recyclable community;

(3) Three (3) members selected by the President Pro Tempore of the Senate:

(A) One (1) member who is an owner or who represents an owner of small business stationary sources; and

(B) Two (2) members who are owners or representatives of a small business recycling company or the marketing and recyclable community; and

(4) One (1) member selected by the Director of the Division of Environmental Quality who shall serve as a nonvoting member except when his or her vote is needed to break a tie vote.

(c)(1) Each member shall serve a term of four (4) years.

(2) In the event of a vacancy in the membership of the panel concerning a member selected by the General Assembly or the Governor, the Governor shall appoint a person meeting the applicable eligibility requirements of the vacated position to fill the vacancy for the remainder of the unexpired term.

(3) In the event of a vacancy in the membership of the panel concerning the member appointed by the director, the director shall appoint a person to fill the vacancy for the remainder of the unexpired term.

(d)(1)(A) The panel shall hold at least one (1) regular meeting each calendar year quarter at a time and place determined by the panel.

(B) At least one (1) meeting each calendar year shall be dedicated to small business stationary sources, with an emphasis on air quality issues.

(2) Special meetings may be called at the discretion of the chair.

(e)(1) The panel shall select a chair by a majority vote of the membership.

(2) Each chair shall serve a term of one (1) year.

(f) Five (5) members of the panel shall constitute a quorum to transact business.

(g) The members of the panel may receive expense reimbursement in accordance with § 25-16-901 et seq.

(h)(1) If a vacancy occurs in an appointed position for any reason, the vacancy shall be filled by appointment by the official who made the appointment.

(2) The new appointee shall serve for the remainder of the unexpired term.

(i) The panel shall perform the following duties for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program:

(1) Render advisory opinions concerning the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

(2) Make periodic reports to the Administrator of the United States Environmental Protection Agency concerning the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act of 1980, the Regulatory Flexibility Act, 5 U.S.C. § 601 et

seq., and the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, and 42 U.S.C. § 1988;

(3) Review information for small business stationary sources to assure such information is understandable by the layperson; and

(4) Have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(j) The panel shall perform the following duties for the Marketing Recyclables Program:

(1) Develop a program for the coordination of all existing marketing programs for recyclables;

(2) Work with existing industry to encourage the use of recyclables in their manufacturing processes;

(3) Recruit new industries that use recyclables in their manufacturing processes;

(4) Maintain current information on market prices and trends; and

(5) Advise and assist state and local officials in all areas of recyclables marketing, including without limitation the implementation, administration, and funding of the collection and recycling or collection and disposal of extra-large tires as defined in § 8-9-402.

History. Acts 1993, No. 242, § 2; 1993, No. 251, § 2; 1997, No. 250, § 45; 1999, No. 1164, §§ 32, 33; 2001, No. 1288, § 2; 2017, No. 1067, § 1; 2019, No. 177, § 1; 2019, No. 910, § 2540.

Amendments. The 2019 amendment by No. 177 added “including without limitation the implementation, administra-

tion, and funding of the collection and recycling or collection and disposal of extra-large tires as defined in § 8-9-402” in (j)(5).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (b)(4).

8-4-316. Purpose — Open burning of vegetative storm debris.

(a) The purpose of this section is to allow a county to seek preauthorization of open burning sites for vegetative storm debris from the Division of Environmental Quality to accelerate the cleanup process in the event of a natural disaster.

(b) Unless otherwise prohibited by federal law, a county may conduct open burning to dispose of vegetative storm debris under the procedures, requirements, and limitations under this section if the county has:

(1) Been declared a disaster area by:

(A) The county under § 12-75-108;

(B) The state under § 12-75-107; or

(C) Federal authorities authorized under federal law to make the declaration; or

(2) Otherwise accumulated substantial vegetative storm debris and provided written notice to the division of the accumulation.

(c)(1) A county shall only burn vegetative storm debris at a site that has been preassessed by the division to determine that the site is consistent with all state and federal laws and regulations.

(2) A county that engages in the open burning of vegetative storm debris at a site that has been preassessed by the division shall comply with this section and the procedures established by the Director of the Division of Environmental Quality.

(3) A county may burn vegetative storm debris at no more than four (4) sites at one (1) time unless the director determines that additional open burning sites are necessary.

(d) At least three (3) days before the commencement of open burning, the county shall provide written notification to the director that certifies the preassessed site satisfies the requirements of all applicable laws and regulations, unless notification is waived by the director.

(e) Open burning under this section shall:

(1) Be performed only during daylight hours on Monday through Friday;

(2) Not occur on a state or federal holiday;

(3) Be completed within one hundred twenty (120) days after the written notice or disaster declaration under subsection (b) of this section unless extended by the director;

(4) Be conducted in a manner so as not to create a nuisance to surrounding communities;

(5) Be conducted only if:

(A) The county is in attainment of the National Ambient Air Quality Standards;

(B) A burn ban is not in effect for the county; and

(C) Adequate firefighting personnel are available to respond to an emergency at a designated open burning site;

(6) Comply with all other applicable state, federal, or local statutes, regulations, rules, ordinances, and orders; and

(7) Be conducted no more than two (2) times per calendar year if the county has not been declared a disaster area under subdivision (b)(1) of this section.

(f) Open burning under this section shall:

(1) Not be conducted within:

(A) Five hundred feet (500') of a residence unless the owner of the residence has given written permission for the open burning; or

(B) One thousand feet (1,000') of a school; and

(2) Exclude any nonvegetative storm debris, including without limitation one (1) or more of the following:

(A) Tires;

(B) Lumber;

(C) Construction debris;

(D) Demolished structures;

(E) Household wastes; and

(F) Trade wastes.

(g)(1) The director may require one (1) or more of the following:

(A) That a designated open burning site be relocated;

(B) That an open burning allowed under this section be prohibited in response to actual or potential violations of state or federal air quality standards in the impacted areas; or

(C) An alternative burn period to assure and maintain air quality compliance with National Ambient Air Quality Standards.

(2) The director may recommend alternative methods of vegetative storm debris disposal, including without limitation the use of air curtain incinerators or composting to the extent allowed under federal law.

(h)(1) A county judge shall not obligate state or federal funds for open burning under this section if the county judge has declared the emergency under § 12-75-108.

(2) However, a county judge may be reimbursed from state or federal funds for the cost of the open burning if the director determines that reimbursement is appropriate.

History. Acts 2005, No. 944, § 1; 2011, No. 10, § 1; 2017, No. 330, § 1; 2019, No. 910, §§ 2541, 2542; 2019, No. 1060, § 1.

A.C.R.C. Notes. Acts 2019, No. 910, §§ 2541-2542, amended former subsections (b) and (f) of this section to change references to “Arkansas Department” to “Division” and “department” to “division”. However, these references were specifically repealed by Acts 2019, No. 1060, § 1.

Amendments. The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” and “division” for “department” throughout the section; and made a stylistic change.

The 2019 amendment by No. 1060, in the section heading, added “Purpose” and inserted “vegetative”; and rewrote the section.

8-4-317. State implementation plans generally.

(a) In developing and implementing a state implementation plan, the Division of Environmental Quality shall consider and take into account the factors specified in § 8-4-312 and the Clean Air Act, 42 U.S.C. § 7401 et seq., as applicable.

(b)(1)(A) Whenever the division proposes to finalize a state implementation plan submittal for review and approval by the United States Environmental Protection Agency, it shall cause notice of its proposed action to be published in a newspaper of general circulation in the state.

(B) The notice required under subdivision (b)(1)(A) of this section shall afford any interested party at least thirty (30) calendar days in which to submit comments on the proposed state implementation plan submittal in its entirety.

(C)(i) In the case of any emission limit, work practice or operational standard, environmental standard, analytical method, air dispersion modeling requirement, or monitoring requirement that is incorporated as an element of the proposed state implementation plan submittal, the record of the proposed action shall include a written explanation of the rationale for the proposal, demonstrating the reasoned consideration of the factors in § 8-4-312 as applicable, the need for each measure in attaining or maintaining the National

Ambient Air Quality Standards as applicable, and that any requirements or standards are based upon generally accepted scientific knowledge and engineering practices.

(ii) For any standard or requirement that is identical to the applicable Arkansas Pollution Control and Ecology Commission rule or federal regulation, the demonstration required under subdivision (b)(1)(C)(i) of this section may be satisfied by reference to the rule or federal regulation. In all other cases, the division shall provide its own justification with appropriate reference to the scientific and engineering literature considered or the written studies conducted by the division.

(2)(A) At the conclusion of the public comment period and before transmittal to the Governor for submittal to the United States Environmental Protection Agency, the division shall provide written notice of its final decision regarding the state implementation plan submittal to all persons who submitted public comments.

(B)(i) The division's final decision shall include a response to each issue raised in any public comments received during the public comment period. The response shall manifest reasoned consideration of the issues raised by the public comments and shall be supported by appropriate legal, scientific, or practical reasons for accepting or rejecting the substance of the comment in the division's final decision.

(ii) For the purposes of this section, response to comments by the division should serve the roles of both developing the record for possible judicial review of a state implementation plan decision and serving as a record for the public's review of the division's technical and legal interpretations on long-range regulatory issues.

(iii) This section does not limit the division's authority to raise all relevant issues of regulatory concern upon adjudicatory review by the commission of a particular state implementation plan decision.

(c)(1) Only those persons that submit comments on the record during the public comment period have standing to appeal the final decision of the division to the commission upon written application made within thirty (30) days after service of the notice under subdivision (b)(2)(A) of this section.

(2) An appeal under subdivision (c)(1) of this section shall be processed as a permit appeal under § 8-4-205. However, the decision of the Director of the Division of Environmental Quality shall remain in effect during the appeal.

History. Acts 2013, No. 1302, § 4; 2017, No. 455, § 2; 2019, No. 315, § 501; 2019, No. 910, §§ 2543-2547.

Amendments. The 2019 amendment by No. 315, in the first sentence of (b)(1)(C)(ii), substituted "rule" for "regulation" and inserted "rule or federal" near the end. The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" and "division" for "department" throughout the section.

8-4-318. National Ambient Air Quality Standards implementation.

(a)(1) The Division of Environmental Quality shall develop NAAQS state implementation plans.

(2) Each NAAQS state implementation plan shall include the measures necessary for the attainment and maintenance of the National Ambient Air Quality Standard in each air quality control region or portion of an air quality control region within the state.

(b)(1) Except with regard to permitting decisions for major source construction under Part C or D of Title I of the Clean Air Act, 42 U.S.C. § 7470 et seq. or 42 U.S.C. § 7501 et seq., National Ambient Air Quality Standards are not effective until adopted by the Arkansas Pollution Control and Ecology Commission under § 8-4-311(b).

(2) Except as required for the permitting of major source construction under Part C or D of Title I of the Clean Air Act, 42 U.S.C. § 7470 et seq. or 42 U.S.C. § 7501 et seq., or otherwise voluntarily proposed and agreed to by the owner or operator of a stationary source, the division shall not mandate for any stationary source measures for the attainment and maintenance of a National Ambient Air Quality Standard until such measures are included in the applicable NAAQS state implementation plan and the NAAQS state implementation plan has been submitted to the United States Environmental Protection Agency. However, this subdivision (b)(2) does not limit or delay the effectiveness of any applicable emission limit or standard promulgated by the United States Environmental Protection Agency under §§ 111, 112, or 129 of the Clean Air Act, 42 U.S.C. § 7411, 42 U.S.C. § 7412, or 42 U.S.C. § 7429.

(3) Unless otherwise voluntarily proposed and agreed to by the owner or operator of a stationary source, the division shall not require or consider air dispersion modeling of an air contaminant for which a National Ambient Air Quality Standard has been established in air permitting decisions for stationary sources except:

(A) As required by Part C of Title I of the Clean Air Act, 42 U.S.C. § 7470 et seq., and the federal regulations promulgated thereto, for the permitting of major source construction;

(B) If necessary in the judgment of the division, with respect to permitting of a temporary source under 42 U.S.C. § 7661c(e); or

(C) Pollutant-specific or facility-specific air dispersion modeling explicitly required by an applicable NAAQS state implementation plan submitted to the United States Environmental Protection Agency.

(c) This section does not prohibit the division from conducting and considering air dispersion modeling as necessary for the:

(1) Development of a state implementation plan; or

(2) Development of a general permit under § 8-4-203.

History. Acts 2013, No. 1302, § 5;
2019, No. 910, §§ 2548-2552.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in (a)(1); and substituted “division” for “department” throughout (b) and (c).

CHAPTER 5
WATER POLLUTION CONTROL FACILITIES

SUBCHAPTER.

- 2. WASTEWATER TREATMENT PLANTS.
- 5. UNDERGROUND SALT WATER DISPOSAL SYSTEMS.
- 6. ARKANSAS PRIVATIZATION ACT.
- 7. CHRONIC NONCOMPLIANCE.
- 8. SMALL BUSINESS REVOLVING LOAN FUND FOR POLLUTION CONTROL AND PREVENTION TECHNOLOGIES ACT.
- 9. LONG-TERM ENVIRONMENTAL PROJECTS.

SUBCHAPTER 2 — WASTEWATER TREATMENT PLANTS

SECTION.

- 8-5-201. Definitions.
- 8-5-202. Penalty and injunctions.
- 8-5-203. Unlawful actions.
- 8-5-204. Licensing committee.
- 8-5-205. Powers and duties generally.
- 8-5-206. Classification of wastewater treatment plants.

SECTION.

- 8-5-207. Operators to be licensed.
- 8-5-208. License requirements.
- 8-5-209. Fees — Wastewater Licensing Fund.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-5-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) “Commission” means the Arkansas Pollution Control and Ecology Commission or its successor;
- (2) [Repealed.]
- (3) “License” means a certificate of competency issued by the Division of Environmental Quality to operators who have met the requirements of the licensing program;

(4) "Licensing committee" means the committee of operators and technicians established in this subchapter to assist and advise the division in the examining and licensing of operators;

(5)(A) "Operator" means any person who is in responsible charge of the operation of a wastewater treatment plant, in whole or in part, and who, during the performance of his or her regular duties, exercises individual judgment which directly or indirectly may affect the proper operation of the wastewater treatment plant.

(B) "Operator" shall not be deemed to include an official solely exercising general administrative supervision; and

(6) "Wastewater treatment plant" means any plant, disposal field, lagoon, pumping station, or other works:

(A) That use chemical or biological processes for:

(i) Treating, stabilizing, or disposing of sewage, industrial wastewaters, or other wastewaters; or

(ii) The reduction and handling of sludge removed from such wastewater; and

(B) From which:

(i) A discharge to the waters of the state occurs; or

(ii) Municipal wastewater is land-applied.

History. Acts 1971, No. 211, § 2; A.S.A. 1947, § 82-1984; Acts 1997, No. 1219, § 7; 1999, No. 719, § 1; 1999, No. 1164, § 39; 2019, No. 910, §§ 2553, 2554.

Amendments. The 2019 amendment

repealed (2); substituted "Division of Environmental Quality" for "department" in (3); and substituted "division" for "department" in (4).

8-5-202. Penalty and injunctions.

(a) A violation of any provision of this subchapter or of any rule issued pursuant to this subchapter shall constitute a misdemeanor and upon conviction shall be punishable as such. Each day's continuance of a violation shall constitute a separate offense.

(b) Any violation of this subchapter shall be subject to injunction proceedings brought by the Division of Environmental Quality in a court of competent jurisdiction.

(c) A violation of any provision of this subchapter or of any rule promulgated under this subchapter is grounds for an administrative revocation or suspension of the operator's license by the division.

History. Acts 1971, No. 211, § 9; A.S.A. 1947, § 82-1991; Acts 1997, No. 1219, § 7; 2005, No. 729, § 1; 2019, No. 315, §§ 502, 503; 2019, No. 910, § 2555.

Amendments. The 2019 amendment by No. 315 deleted "or regulation" following "or of any rule" in (a) and (c).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b); and substituted "division" for "department" in (c).

8-5-203. Unlawful actions.

It shall be unlawful for any municipality, governmental subdivision, public or private corporation, or other person to operate a public or private wastewater treatment plant unless the competency of the operator is duly licensed by the Division of Environmental Quality under the provisions of this subchapter. It shall further be unlawful for any person to perform the duties of an operator of any such wastewater treatment plant without being duly licensed under this subchapter.

History. Acts 1971, No. 211, § 8; A.S.A. 1947, § 82-1990; Acts 1991, No. 1103, § 1; 1997, No. 1219, § 7; 2019, No. 910, § 2556.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

8-5-204. Licensing committee.

(a)(1) There is created and established a licensing committee to advise and assist the Arkansas Pollution Control and Ecology Commission and the Division of Environmental Quality in the administration of the licensing program.

(2) The committee shall be composed of eight (8) members:

(A) Five (5) members, to be appointed by the commission, of which three (3) members shall be active wastewater treatment plant operators licensed by the commission and two (2) members shall be employed by a private corporation or industry located in Arkansas and nominated at large by the corporations or industries for service on the committee;

(B) One (1) member, to be appointed by the commission, shall be an employee of a municipality operating a wastewater treatment plant who holds the position of chief administrative officer, city engineer, director of public utilities, or other equivalent position;

(C) One (1) member, to be appointed by the commission, shall be a faculty member of an accredited college, university, or professional school in this state whose major field is related to water resources or sanitary engineering; and

(D) One (1) member shall be the Director of the Division of Environmental Quality or a qualified member of his or her staff who shall act as executive secretary of the committee.

(b)(1) In the event of a vacancy, a new member shall be appointed by the commission to serve out the unexpired term.

(2) No member shall serve more than two (2) consecutive three-year terms.

(c)(1) State agency members of the committee shall receive no additional salary or per diem for their services as members of the committee, but they may receive expense reimbursement in accordance with § 25-16-901 et seq.

(2) The members appointed by the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1971, No. 211, § 6; A.S.A. 1947, § 82-1988; Acts 1993, No. 556, § 1; 1997, No. 250, § 46; 1997, No. 697, § 2; 1997, No. 1219, § 7; 1999, No. 719, §§ 2, 3; 1999, No. 1164, § 40; 2019, No. 910, §§ 2557, 2558.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1) and (a)(2)(D).

8-5-205. Powers and duties generally.

(a) The Division of Environmental Quality or its successor shall be charged with the responsibility of administering and enforcing this subchapter, with the advice and assistance of the licensing committee, and is given and charged with the following powers and duties:

(1) To conduct examinations for licensing, which shall be conducted at least annually and more frequently as the Arkansas Pollution Control and Ecology Commission shall deem necessary;

(2) To issue licenses to qualified wastewater treatment plant operators, to renew those licenses, and to suspend or revoke the licenses for cause, after due notice and hearing;

(3) To institute court proceedings to compel compliance with the provisions of this subchapter and the rules issued pursuant thereto; and

(4) To participate financially in programs sponsored by the Arkansas Water Environment Association, Inc. or its successor, provided that the participation shall not exceed the sum of one thousand dollars (\$1,000) per fiscal year.

(b)(1) The commission shall serve as the rulemaking and appointment authority for implementation of this subchapter.

(2) The commission’s powers shall include:

(A) To adopt rules implementing and effectuating this subchapter as may be necessary for the administration and enforcement thereof;

(B) To make appointments to the committee in accordance with this subchapter; and

(C) To set reasonable licensure and examination fees to cover the costs of administration of this subchapter.

History. Acts 1971, No. 211, § 3; A.S.A. 1947, § 82-1985; Acts 1993, No. 556, § 2; 1997, No. 1219, § 7; 1999, No. 1164, § 41; 2019, No. 315, § 504; 2019, No. 910, § 2559.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a).

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “To adopt rules” in (b)(2)(A).

8-5-206. Classification of wastewater treatment plants.

(a) The Arkansas Pollution Control and Ecology Commission shall, through rules, classify all wastewater treatment plants, taking into account:

(1) The size, type, and complexity of the wastewater treatment plant;

(2) The character and volume of wastewater treated;

(3) The population served;

(4) The skill, knowledge, and experience reasonably required to supervise the proper operation of the wastewater treatment plant; and

(5) Such other factors as the commission shall deem appropriate.

(b) The Division of Environmental Quality shall license persons as to their qualifications to supervise successfully the proper operation of wastewater treatment plants within classifications based on the recommendations of the licensing committee.

History. Acts 1971, No. 211, § 5; A.S.A. 1947, § 82-1987; Acts 1997, No. 1219, § 7; 2019, No. 315, § 505; 2019, No. 910, § 2560.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in the introductory language of (a).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (b).

8-5-207. Operators to be licensed.

In order to safeguard the public health and protect the waters of this state from pollution, all operators in responsible charge of public or private wastewater treatment plants shall be duly licensed and certified as competent by the Division of Environmental Quality under the provisions of this subchapter and under such rules as the Arkansas Pollution Control and Ecology Commission may adopt, with the advice and assistance of the licensing committee, pursuant to the authority of this subchapter. All rules promulgated pursuant to this subchapter shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

History. Acts 1971, No. 211, § 1; A.S.A. 1947, § 82-1983; Acts 1991, No. 1103, § 2; 1997, No. 179, § 2; 1997, No. 1219, § 7; 2019, No. 315, § 506; 2019, No. 910, § 2561.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” fol-

lowing “such rules” in the first sentence, and deleted “and regulations” following “All rules” in the second sentence.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-5-208. License requirements.

(a) The Division of Environmental Quality shall license and certify all applicants for licenses under this subchapter who satisfy the requirements of this subchapter and the rules issued pursuant to this subchapter. Licenses shall be granted according to the classification of wastewater treatment plants established under this subchapter. Licenses shall be valid for a period of two (2) years and shall be renewable upon application without examination.

(b) All operators of wastewater treatment plants within the state shall apply to the division for a license.

(c) In its discretion, the division may waive the requirements or any part of the requirements for formal examination of an applicant for license if the applicant holds a valid license or certificate from another state in which the requirements for license in the appropriate classification are at least equal to the requirements set forth in this subchapter and the rules issued pursuant to this subchapter.

History. Acts 1971, No. 211, § 4; A.S.A. 1947, § 82-1986; Acts 1997, No. 1219, § 7; 2005, No. 729, § 2; 2007, No. 544, § 1; 2019, No. 315, §§ 507, 508; 2019, No. 910, § 2562.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” preceding “issued pursuant” in (a) and (c).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (b) and (c).

8-5-209. Fees — Wastewater Licensing Fund.

(a)(1) The Arkansas Pollution Control and Ecology Commission shall have the authority to set fees in an amount to cover the cost of the administration of this subchapter.

(2)(A) Licensing and examination fees shall be set forth by rule.

(B) However, the licensing and examination fees shall not exceed:

(i) A combined examination and license fee of forty dollars (\$40.00); and

(ii) An annual license renewal fee of twenty dollars (\$20.00).

(b) All fees collected under this section shall be deposited into the Wastewater Licensing Fund and may be used only for the administration of this subchapter.

History. Acts 1971, No. 211, § 7; A.S.A. 1947, § 82-1989; Acts 1991, No. 1104, § 1; 1997, No. 288, § 1; 1997, No. 1219, § 7; 1999, No. 777, § 1; 2019, No. 315, § 509; 2019, No. 693, § 11.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” in (a)(2)(A).

The 2019 amendment by No. 693 substituted “by” for “in the” in (a)(2)(A); inserted “licensing and examination” in the introductory language of (a)(2)(B); and rewrote (b).

SUBCHAPTER 5 — UNDERGROUND SALT WATER DISPOSAL SYSTEMS

SECTION.

8-5-501. Regulation of systems generally.

8-5-501. Regulation of systems generally.

(a)(1) The Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission are empowered to establish reasonable rules and specifications for the establishment and operation of underground salt water disposal systems to be used in disposing of salt water produced in the production of oil.

(2)(A) Any person wishing to establish an approved underground salt water disposal system shall make application to the Arkansas

Pollution Control and Ecology Commission and the Oil and Gas Commission for a permit to construct and operate the underground salt water disposal system for the purpose of obtaining the benefits of the provisions of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206, 26-58-207 [repealed], 26-58-208 — 26-58-210, and 26-58-211 [repealed].

(B) The application shall include:

(i) A description of the underground salt water disposal system that is to be established;

(ii) The plans and specifications thereof;

(iii) The location of the underground salt water disposal system and the number and location of the salt water producing oil wells to be served by the underground salt water disposal system;

(iv) The name of each oil producer to be served;

(v) A description of the underground level or strata into which the salt water is to be injected; and

(vi) Such other information as may be required by rules of the Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission.

(b)(1) If the Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission determine that the underground salt water disposal system for which application is made will meet the requirements of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206, 26-58-207 [repealed], 26-58-208 — 26-58-210, and 26-58-211 [repealed], and the rules of the Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission, a permit for the establishment of the underground salt water disposal system shall be issued.

(2)(A) Upon the completion of the underground salt water disposal system, the commission granting the permit provided for in this section shall cause an inspection of the underground salt water disposal system to be made.

(B)(i) If the commission determines that the underground salt water disposal system is in compliance with the requirements of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206, 26-58-207 [repealed], 26-58-208 — 26-58-210, and 26-58-211 [repealed], and the rules of the commission, a certificate of approval of the underground salt water disposal system shall be granted.

(ii) The certificate of approval shall be signed by the chair and secretary of the commission.

(iii) Copies of the certificate of approval shall be furnished, upon application therefor, to each oil producer who disposes of salt water through such approved underground salt water disposal system.

(3)(A) The commission granting the certificate of approval shall, from time to time, inspect the approved underground salt water disposal system.

(B)(i) If a determination is made that the underground salt water disposal system is being operated in a manner contrary to the

provisions of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206, 26-58-207 [repealed], 26-58-208 — 26-58-210, and 26-58-211 [repealed], or the rules of the commission, the commission may revoke the certificate of approval until such time as a showing may be made that the deficiencies in the underground salt water disposal system have been corrected to the satisfaction of the commission.

(ii) No oil producer shall be entitled to the benefits of the provisions of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206, 26-58-207 [repealed], 26-58-208 — 26-58-210, and 26-58-211 [repealed], during the period in which the certificate of approval is revoked.

History. Acts 1959, No. 57, § 4; A.S.A. 1947, § 84-2116; Acts 2019, No. 315, §§ 510-514.

Amendments. The 2019 amendment

deleted “regulations” following “rules” in (a)(1); and deleted “and regulations” following “rules” in (a)(2)(B)(vi), (b)(1), (b)(2)(B)(i), and (b)(3)(B)(i).

SUBCHAPTER 6 — ARKANSAS PRIVATIZATION ACT

SECTION.
8-5-609. Privatization contracts, service

agreements, etc. — Exemption from certain laws.

8-5-609. Privatization contracts, service agreements, etc. — Exemption from certain laws.

The privatization contract, the service agreement, and any other purchase by the local government in connection with the privatization contract shall not be subject to the provisions of §§ 14-22-101 — 14-22-115, 14-58-201 — 14-58-203, 14-58-301 — 14-58-303, 14-58-305, 14-58-306 [repealed], 14-58-307, and 14-58-308 or any other law, rule, or regulation requiring competitive bids.

History. Acts 1985, No. 690, § 4; A.S.A. 1947, § 82-1992.3; Acts 2019, No. 315, § 515.

Amendments. The 2019 amendment inserted “rule”.

SUBCHAPTER 7 — CHRONIC NONCOMPLIANCE

SECTION.
8-5-701. Definitions.
8-5-702. Remedies for chronic violations.
8-5-703. Financial assurance require-

ments for subsequently permitted common sewage systems.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and

operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the

fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-5-701. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Chronic noncompliance” means conditions described in this subchapter that persist at a common sewage system after reasonable efforts by the Division of Environmental Quality to obtain compliance with applicable laws or rules in one (1) of the following:

(A) Failure to obtain a permit as required by law;

(B) Four (4) or more permit violations within a six-month period as set out in the permit issued by the division;

(C) Failure to maintain the services of a certified wastewater treatment operator, where applicable; or

(D) Demonstrable failure to operate the common sewage system so as to prevent the discharge of waterborne pollutants in unacceptable concentrations, as defined in the individual permit or the state’s water quality standards, to the surface waters or groundwater of the state; and

(2)(A) “Common sewage system” means any sewage treatment system and its associated sewage collection and pumping facilities, nonmunicipal, publicly or privately owned, serving two (2) or more individually owned, rented, or temporarily occupied lots for the purpose of the collection or disposal of sewage.

(B) “Common sewage system” includes systems owned or operated by:

(i) Property owners’ associations;

(ii) Nonmunicipal sewage improvement districts; and

(iii) Owners or managers of nonmunicipal residential subdivisions.

History. Acts 1995, No. 336, § 1; 1999, No. 1164, § 45; 2019, No. 315, § 516; 2019, No. 910, § 2563.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in the introductory language of (1).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (1); and substituted “division” for “department” in (1)(B).

8-5-702. Remedies for chronic violations.

(a) The Division of Environmental Quality may petition a circuit court with competent jurisdiction and proper venue to remedy chronic violations by any common sewage system.

(b) The circuit court may order any relief authorized by applicable laws, including:

(1) The imposition of civil penalties;

(2) The revocation of the entity’s permit; and

(3) A court order compelling the entity supplying potable water to the common sewage system to cut off the flow of potable water.

(c)(1) If the circuit court finds that circumstances prevent the owner or operator of a common sewage system from operating and maintaining the system in compliance with the law, the division shall nominate two (2) possible receivers, of which the court may appoint one (1) to operate the common sewage system, subject to the continuing jurisdiction of the circuit court.

(2) Any such receiver appointed by the circuit court may exercise any and all legal powers and rights assigned by law to the original owner or operator of the common sewage system, but is immune to any personal liability associated with the operation of the common sewage system.

(3) Once a receiver is appointed by the circuit court to operate the common sewage system, the circuit court may make available to the receiver funds pledged by the common sewage system under the minimal financial assurance provision of this subchapter, and, in addition, the receiver may assess rates as necessary to operate and maintain the common sewage system. The receiver is explicitly authorized to operate the common sewage system with the proceeds collected from the facilities which are connected to such common sewage system. The receiver shall receive a reasonable professional fee for this service, which shall be determined by the circuit court. The proceeds collected by the receiver shall be maintained in an account at a national bank located within the State of Arkansas. The receiver shall report to the circuit court, from time to time, how the proceeds have been collected and spent by the receiver.

(d)(1) If the circuit court determines that the permitted or registered entity cannot equitably satisfy the provisions of this subchapter or that no feasible alternatives exist, the circuit court shall so certify that determination to the division, which shall terminate the entity's permit, and the circuit court shall request a review by the Secretary of the Department of Health of the public health impact of an order compelling the entity supplying potable water to the common sewage system to cut off the flow of potable water.

(2)(A) If the secretary determines that a greater health hazard exists from the malfunctioning common sewage system than from the discontinuance of potable water service, then the secretary shall so certify this determination to the circuit court.

(B) The circuit court shall then issue an order compelling the receiver to notify all users of such common sewage system, including landowners and tenants, of the secretary's determination.

(C) Upon evidence of reasonable notice, the circuit court shall then issue the order to cut off the flow of potable water.

(e) The division is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter and of rules, orders, permits, or plans issued pursuant thereto;

(2) Affirmatively order remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the division and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this subchapter and of any rules, permits, or plans issued pursuant thereto; or

(5) Recover civil penalties assessed pursuant to § 8-4-103(c).

(f)(1) In addition to the remedies provided in subsections (a)-(e) of this section, the division shall have the authority to prohibit new or additional sewer line connections onto a common sewage system meeting the criteria established by § 8-5-701.

(2) Once the division is satisfied that the common sewage system is in compliance with state and federal law, the division may authorize new or additional sewer line connections onto the common sewage system.

History. Acts 1995, No. 336, § 1; 1997, No. 287, § 1; 1999, No. 1164, §§ 46-49; 2019, No. 315, §§ 517, 518; 2019, No. 910, §§ 2564-2569.

Amendments. The 2019 amendment by No. 315 deleted “regulations” following “rules” in (e)(1) and (e)(4).

The 2019 amendment by No. 910 substituted “Division of Environmental Qual-

ity” for “Arkansas Department of Environmental Quality” throughout the section; substituted “Secretary” for “Director” in (d)(1); substituted “secretary” for “Director of the Department of Health” twice in (d)(2)(A); and substituted “secretary’s” for “Director of the Department of Health’s” in (d)(2)(B).

8-5-703. Financial assurance requirements for subsequently permitted common sewage systems.

(a)(1)(A) The Division of Environmental Quality may require a permitted common sewage system that is in chronic noncompliance to demonstrate to the division its financial ability to cover the estimated costs of operating and maintaining the common sewage system for a minimum period of five (5) years.

(B) The division may require the permitted common sewage system that is in chronic noncompliance to submit a cost estimate for a third party to operate and maintain the common sewage system each year for a period of five (5) years.

(2) The division shall not modify or renew a National Pollutant Discharge Elimination System permit or state permit for a common sewage system if the common sewage system facility is in chronic noncompliance and the common sewage system facility proposes to use new technology that in the discretion of the division cannot be verified to meet permit requirements.

(b) The applicant's financial ability to operate and maintain the common sewage system for a period of five (5) years shall be demonstrated to the division by:

(1) Obtaining insurance that specifically covers operation and maintenance costs;

(2) Obtaining a letter of credit;

(3) Obtaining a surety bond;

(4) Obtaining a trust fund or an escrow account; or

(5) Using a combination of insurance, letter of credit, surety bond, trust fund, or escrow account.

(c) The division may require an amount of financial assurance that exceeds the cost estimate submitted by the applicant.

(d) A financial instrument required by this section shall be posted to the benefit of the division and shall remain in effect for the life of the permit.

(e) It is explicitly understood that the division shall not directly operate and shall not be responsible for the operation of any sewage system.

(f) This section does not restrict local and county government entities from enacting more stringent ordinances regulating nonmunicipal domestic treatment sewage systems in Arkansas.

History. Acts 1995, No. 336, § 1; 1999, No. 1164, §§ 50, 51; 2007, No. 832, § 2; 2009, No. 409, § 2; 2019, No. 910, § 2570.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (a)(1)(A); and substituted "division" for "department" throughout the section.

SUBCHAPTER 8 — SMALL BUSINESS REVOLVING LOAN FUND FOR POLLUTION CONTROL AND PREVENTION TECHNOLOGIES ACT

SECTION.

8-5-802. Purpose.

8-5-803. Definitions.

8-5-804. Eligible activities.

8-5-805. Eligible applicants.

SECTION.

8-5-806. Terms of the revolving loan.

8-5-807. Small Business Revolving Loan Fund.

8-5-808. Administration of the program.

Effective Dates. Acts 2019, No. 82, § 23; July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the General Improvement Fund should no longer be utilized; that the Development and Enhancement Fund is necessary to complete unfinished state projects; and that this act is necessary to address infrastructure needs and unanticipated needs of the State of Arkansas. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health,

and safety shall become effective on July 1, 2019".

Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classifi-

cation of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year.

Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-5-802. Purpose.

It is the purpose of this subchapter to authorize the Division of Environmental Quality to establish and administer a revolving loan fund to encourage the investment in pollution control and prevention technologies in Arkansas. The fund will promote sustainable economic development in Arkansas by establishing a publicly capitalized fund to make loans to small businesses for projects to meet regulatory mandates in pollution control, to adopt pollution prevention technologies, or to implement waste reduction practices.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, § 52; 2001, No. 213, § 1; 2019, No. 910, § 2571.

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

Amendments. The 2019 amendment

8-5-803. Definitions.

As used in this subchapter:

(1) "Applicant" means any business concern operating within the State of Arkansas that meets the criteria of a person, corporation, partnership, or other business organization;

(2) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(3) [Repealed.]

(4) [Repealed.]

(5)(A) "Pollution prevention" means reducing or eliminating the generation of pollutants and waste at the source.

(B) "Pollution prevention" includes:

(i) Process modifications and equipment acquisitions that promote the recovery and reuse of pollutants; and

(ii) The acquisition and installation of capital equipment, a process change, or a combination of capital equipment and process change.

(C) "Pollution prevention" does not include investments in waste treatment processes or equipment, unless the waste treatment involves the recovery and reuse of pollutants; and

(6)(A) "Waste reduction" means handling or processing waste materials in a way that ultimately reduces the total quantity of waste disposed.

(B) "Waste reduction" includes process modifications and equipment acquisitions that promote the recovery, reuse, or recycling of pollutants and wastes.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, §§ 53, 54; 2001, No. 213, § 2; 2005, No. 1254, § 1; 2019, No. 315, § 519; 2019, No. 693, § 12; 2019, No. 910, § 2572.

A.C.R.C. Notes. Acts 2019, No. 315, § 519, amended former subdivision (5) of this section concerning the definition of “mandated environmental control” to insert the phrase “environmental law or duly adopted regulation” following “federal” and replace “regulation” with “rule” at the end of the subdivision. However,

Acts 2019, No. 693, § 12, specifically repealed this subdivision.

Amendments. The 2019 amendment by No. 315, in former (5), inserted “environmental law or duly adopted regulation” and substituted “rule” for “regulation”.

The 2019 amendment by No. 693 deleted former (5); redesignated former (6) as (5); rewrote (5)(B) and (C); and deleted (5)(D).

The 2019 amendment by No. 910 repealed (3) and (4).

8-5-804. Eligible activities.

(a) Moneys deposited into the Small Business Revolving Loan Fund within the Division of Environmental Quality may be:

(1) Loaned to eligible participants to pay the direct costs of projects which are designed to correct or avoid violations of federal environmental regulations or state environmental rules and have received a certificate of need from the division; or

(2) Expended to pay costs incurred by the division to provide management of lending activities.

(b)(1) It is the purpose of this subchapter to authorize the division to establish and administer a revolving loan fund to encourage the investment in pollution control, pollution prevention, and waste reduction practices in Arkansas.

(2) Such a fund will promote sustainable economic development in Arkansas by establishing a publicly capitalized revolving loan fund to make loans to small businesses for projects to meet regulatory mandates in pollution control or to adopt pollution prevention technologies.

(3) Operating expenses associated with proofing a process change or equipment modification would be an eligible loan activity.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, § 55; 2001, No. 213, § 3; 2019, No. 315, § 520; 2019, No. 910, § 2573.

Amendments. The 2019 amendment by No. 315 substituted “federal environmental regulations or state environmental rules” for “federal or state environmental regulations” in (a)(1).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a); and substituted “division” for “department” in (a)(1), (a)(2), and (b)(1).

8-5-805. Eligible applicants.

(a) An eligible applicant shall:

(1) Employ one hundred (100) or fewer individuals, including both full-time and part-time employees, through direct hiring or contract, including affiliates and subsidiaries, at the time an application for a loan is received by the Division of Environmental Quality;

(2) Provide proof of profitable operations and a demonstrated ability to repay the loan; and

(3) Submit an application supplied by the division including any supporting documents, instruments, or other documents requested by the division for the purposes of recommending approval or disapproval of a loan described in this section.

(b)(1) Until all delinquent fees stated in this subsection or otherwise owed to the division are paid in full and no balance is due, the Director of the Division of Environmental Quality shall not approve any loan application.

(2) The delinquent fees include, but are not limited to:

- (A) Permit fees;
- (B) Permit modification fees;
- (C) License fees;
- (D) Certification fees;
- (E) Registration fees;
- (F) Variance application fees;
- (G) Civil penalties;
- (H) Emergency response reimbursements;
- (I) Loan payments; and
- (J) Review fees.

History. Acts 1997, No. 691, § 1; 2005, No. 1254, § 2; 2019, No. 910, §§ 2574-2576.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in (a)(1) and (b)(1); and substituted “division” for “department” in (a)(3) twice and in (b)(1).

8-5-806. Terms of the revolving loan.

(a)(1) The maximum loan amount shall be:

(A) Forty-five thousand dollars (\$45,000) per mandated pollution control project;

(B) Forty-five thousand dollars (\$45,000) per pollution prevention project; and

(C) Forty-five thousand dollars (\$45,000) per waste reduction project.

(2) The maximum allowable amount to be loaned shall not exceed sixty-five thousand dollars (\$65,000) per individual applicant.

(b) The maximum term of the loan shall be ten (10) years per mandated pollution control project and ten (10) years per pollution prevention or waste reduction project.

(c) The interest rate shall be:

(1) Established by the Division of Environmental Quality at or below market rate; and

(2) Fixed for the term of each loan at the rate that is in effect when the loan application is received or when the loan is closed, whichever is lower.

(d)(1) The borrower shall be required to make level monthly amortizing payments to retire the debt by the end of the loan term.

(2) Loan principal may be repaid in part or in full at any time without penalty.

(e)(1) The division may:

- (A) Make secured or unsecured loans with a promissory note;
- (B) Collect interest on any loans issued; and
- (C) Assess penalties on late loan payments.

(2) Loans issued under this subchapter may contain an acceleration clause.

(f) The division may bring any lawful action to recover any loan that is in default.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, § 56; 2001, No. 213, § 4; 2005, No. 1254, § 3; 2019, No. 910, §§ 2577-2579.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (c)(1); and substituted "division" for "department" in the introductory language of (e)(1), and in (f).

8-5-807. Small Business Revolving Loan Fund.

(a) There is created within the Division of Environmental Quality a revolving loan fund:

(1) Which shall be designated the "Small Business Revolving Loan Fund";

(2) Into which shall be transferred or deposited the moneys to be provided by law for the Small Business Revolving Loan Fund; and

(3) To be used as a revolving fund by the division for making loans to eligible participants to pay the direct costs of projects that are designed to correct or avoid violations of federal environmental law or regulation or state environmental rules and have received a certificate of need from the division or to pay costs incurred by the division to provide management of lending activities.

(b)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Small Business Revolving Loan Fund".

(2) The Small Business Revolving Loan Fund shall consist of the following:

(A) All funds transferred from the General Improvement Fund or its successor fund or fund accounts, including the Development and Enhancement Fund, to be otherwise provided by law for the Small Business Revolving Loan Fund;

(B) All moneys received by the division upon repayment of loans made from the furnishing of funds for loans under the program created by this subchapter;

(C) Interest earned upon any money in the Small Business Revolving Loan Fund; and

(D) All sums recovered upon by the Small Business Revolving Loan Fund for losses to the Small Business Revolving Loan Fund or for loan losses under the loan program created in this subchapter and all other moneys received for the Small Business Revolving Loan Fund from any source.

(c)(1) Subject to the provisions of this subchapter, the division is vested with full power, authority, and jurisdiction over the Small

Business Revolving Loan Fund, including all moneys and property or securities belonging to the Small Business Revolving Loan Fund.

(2) The division may invest the Small Business Revolving Loan Fund in direct general obligations of the United States, in certificates of deposit or savings accounts in an amount not to exceed the capital funds, represented by capital, surplus, and undivided profits in financial institutions located in Arkansas that are insured by an agency of the United States Government, and in repurchase agreements that are collateralized by direct general obligations of the United States or by bonds, notes, debentures, participation certificates, or other obligations issued by an agency of the United States, the principal and interest of which are guaranteed by the agency or the United States.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, §§ 57, 58; 2005, No. 1254, § 4; 2019, No. 82, § 4; 2019, No. 315, § 521; 2019, No. 910, §§ 2580-2583.

A.C.R.C. Notes. Acts 2019, No. 82, § 1, provided: “Legislative intent. It is the intent of the General Assembly that the creation of the Development and Enhancement Fund is necessary to provide a mechanism to disburse funds for:

“(1) Various construction and improvement projects;

“(2) Unforeseen needs;

“(3) Funding deficiencies; and

“(4) The completion of projects previously funded by the General Assembly”.

Amendments. The 2019 amendment by No. 82 inserted “or its successor fund or fund accounts, including the Development and Enhancement Fund” in (b)(2)(A).

The 2019 amendment by No. 315 substituted “environmental law or regulations or state environmental rules” for “or state environmental regulations” in (a)(3).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a); and substituted “division” for “department” throughout the section.

8-5-808. Administration of the program.

The Division of Environmental Quality will manage the program through its Small Business Assistance Program. The program is authorized to delegate the management of the Small Business Revolving Loan Fund. The division shall retain the power to issue certificates of need for eligible projects and shall not delegate such authority.

History. Acts 1997, No. 691, § 1; 1999, No. 1164, § 59; 2019, No. 910, § 2584.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” and “division” for “department”.

SUBCHAPTER 9 — LONG-TERM ENVIRONMENTAL PROJECTS

SECTION.

8-5-902. Definitions and applicability.

8-5-903. Procedures for approval of environmental projects, contents of applications, and public notice.

SECTION.

8-5-904. Modification of water quality standards.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-5-902. Definitions and applicability.

As used in this subchapter:

(1) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(2) [Repealed.]

(3) “Long-term improvement project” or “project” means any remediation or reclamation project at closed or abandoned:

(A) Mineral extraction sites;

(B) Solid waste management units as defined pursuant to the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.;

(C) Oil and gas extraction sites;

(D) Brownfield sites as defined in Acts 1995, No. 125, or as may be amended; and

(E) Hazardous substance sites listed on the National Priorities List, 42 U.S.C. § 9605, or state priority list, § 8-7-509(f), or as may be amended; and

(4) “Water quality standard” means standards developed through administrative rulemaking by the commission.

History. Acts 1997, No. 401, § 2; 1999, No. 1164, § 60; 2013, No. 1127, § 4; 2019, No. 910, § 2585.

Amendments. The 2019 amendment repealed (2).

8-5-903. Procedures for approval of environmental projects, contents of applications, and public notice.

(a) A petitioner seeking approval of a change in water quality standards to accommodate a long-term improvement project shall file with the Division of Environmental Quality a notice of intent, which includes as a minimum:

(1) A description of the water body or stream segment affected by the project;

(2) The existing ambient water quality for the use of criteria at issue;

(3) The affected water quality standard;

(4) The modifications sought;

(5) The proposed remediation activities;

(6) A proposed remediation plan, which shall contain:

(A) A description of the existing conditions, including identification of the conditions limiting the attainment of the water quality standards;

(B) A description of the proposed water quality standard modification, both during and post-project;

(C) A description of the proposed remediation plan; and

(D) The anticipated collateral effects, if any, of the remediation plan; and

(7) A schedule for implementing the remediation plan that ensures that the post-project water quality standards are met as soon as reasonably practicable.

(b) The division shall cause notice of the proposed project and associated water quality standard changes described in subsection (a) of this section to be published for public notice and comment in the same manner as provided for permit applications in § 8-4-203(c), and shall notify the public that the details of the proposed project are available for public review.

(c)(1) After considering comments from the public, the division shall notify the petitioner as to whether the proposed project is approved or denied.

(2) The division may deny approval of a project if it reasonably concludes that:

(A) The plan is not complete;

(B) The plan is not technically sound;

(C) The schedule is unrealistic;

(D) The plan will not have an overall beneficial effect for the environment; or

(E) For other appropriate reasons.

(3) Any division determination on the approval or denial of a project is subject to the appeal procedures applicable to permitting decisions set out in § 8-4-205.

(d) Upon approval of the project for further development, the petitioner shall prepare documentation required for third-party rulemaking by § 8-4-202 and established in administrative procedures.

History. Acts 1997, No. 401, § 3; 2009, No. 409, § 3; 2019, No. 910, §§ 2586, 2587.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (a); and substituted "division" for "department" in (b) and throughout (c).

8-5-904. Modification of water quality standards.

(a) The Arkansas Pollution Control and Ecology Commission may approve a modification where the water quality standard is not being maintained due to conditions which may, in part or in whole, be corrected through the implementation of long-term measures. The

commission shall establish such subcategory of use and modify such general and specific standards as it deems appropriate to reflect such modification while ensuring that the fishable/swimmable use is maintained. In all water quality standard changes associated with long-term improvement projects, the remedial action plan described in § 8-5-903(a) shall be incorporated by reference in the statement of basis and purpose of the rule and shall be considered an essential condition of the modified water quality standard.

(b)(1) Once the commission approves a water quality standard modification, the Division of Environmental Quality shall ensure that conditions and limitations designed to achieve compliance with the plan are established in applicable discharge permits, consent administrative orders, or such other enforcement measures deemed appropriate by the division.

(2) The division may allow modifications by the petitioner to the remediation plan and schedule as is deemed appropriate, provided that any such modifications to the original remedial action plan shall not render the project significantly less protective of the applicable use subcategory.

(3) Should the division find that the petitioner is not acting in good faith to complete the project in accordance with the approved plan, applicable and appropriate enforcement authority may be exercised subject to appeal to the commission.

(c) The division or the petitioner shall report annually to the commission on the progress of the project.

History. Acts 1997, No. 401, § 4; 2019, No. 910, § 2588.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (b)(1); and substituted "division" for "department" throughout (b) and (c).

CHAPTER 6

DISPOSAL OF SOLID WASTES AND OTHER REFUSE

SUBCHAPTER.

2. ARKANSAS SOLID WASTE MANAGEMENT ACT.
3. COUNTY SOLID WASTE MANAGEMENT SYSTEM AID FUND.
4. LITTER CONTROL ACT.
5. ILLEGAL DUMP ERADICATION AND CORRECTIVE ACTION PROGRAM ACT [REPEALED EFFECTIVE MAY 1, 2020.]
6. SOLID WASTE MANAGEMENT AND RECYCLING FUND ACT.
7. REGIONAL SOLID WASTE MANAGEMENT DISTRICTS AND BOARDS.
8. BONDS BY REGIONAL SOLID WASTE MANAGEMENT DISTRICTS.
9. LICENSING OF OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES.
10. LANDFILL POST-CLOSURE TRUST FUND.
11. LANDFILL SERVICE AREAS.
12. DISPOSAL OF INCINERATOR ASH AND PETROLEUM-CONTAMINATED SOILS.
13. COMMERCIAL MEDICAL WASTE INCINERATION FACILITIES.
14. RESIDENTIAL USE OF LANDFILLS.
15. SITING HIGH IMPACT SOLID WASTE MANAGEMENT FACILITIES.
16. FINANCIAL ASSURANCE.

SUBCHAPTER.

17. OPEN BURNING OF RESIDENTIAL YARD WASTE.
18. ANIMAL WASTE.
19. STATEWIDE SOLID WASTE MANAGEMENT PLAN ACT.
20. ENVIRONMENTAL COMPLIANCE RESOURCE ACT.

SUBCHAPTER 2 — ARKANSAS SOLID WASTE MANAGEMENT ACT

SECTION.

- 8-6-203. Definitions.
- 8-6-204. Criminal, civil, and administrative penalties.
- 8-6-205. Illegal actions — Rebuttable presumption — Acts or omissions by third party.
- 8-6-206. Proceedings in circuit court.
- 8-6-207. Powers and duties of the division and commission generally.
- 8-6-208. Existing rules, orders, etc.

SECTION.

- 8-6-211. Municipal solid waste management systems.
- 8-6-214. Records and examinations.
- 8-6-219. Applicants for permits — Applicability.
- 8-6-220. Yard waste — Definitions.
- 8-6-221. Review of rules.
- 8-6-223. Household hazardous waste storage or processing centers — Permit required.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-6-203. Definitions.

As used in this subchapter:

(1) “Disposal site” means any place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling, composting, or any other method;

(2)(A) “Hazardous waste” means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may in the judgment of the Division of Environmental Quality:

(i) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, or disposed of, or otherwise improperly managed.

(B) "Hazardous waste" includes without limitation waste that:

- (i) Is radioactive;
- (ii) Is toxic;
- (iii) Is corrosive;
- (iv) Is flammable;
- (v) Is an irritant or a strong sensitizer; or
- (vi) Generates pressure through decomposition, heat, or other means;

(3) "Household" means a single or multiple residence, hotel or motel, bunkhouse, ranger station, crew quarters, campground, picnic ground, and day-use recreation area;

(4)(A) "Household hazardous waste" means any hazardous waste derived from a household that is no longer under the control of the household.

(B) "Household hazardous waste" includes without limitation:

- (i) Household cleaners;
- (ii) Gasoline;
- (iii) Paint, paint strippers, and paint thinners;
- (iv) Motor oil; and
- (v) Herbicides and pesticides, excluding antimicrobial and disinfectant products;

(5)(A) "Household hazardous waste storage or processing center" means a facility that stores, accumulates, or processes household hazardous waste.

(B) "Household hazardous waste storage or processing center" does not include:

(i) Hazardous waste treatment, storage, and disposal facilities permitted by the division under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.;

(ii) Facilities with an agriculture exemption under § 8-6-2019; or

(iii) De minimis amounts of household hazardous waste that have not been removed from the municipal solid waste stream;

(6) "Municipality" means a city of the first class, a city of the second class, or an incorporated town;

(7) "Person" means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, city, town, municipal authority or trust, venture, or other legal entity, however organized;

(8)(A) "Pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or for use as a plant regulator, defoliant, or desiccant.

(B) "Pesticide" does not include:

(i) A new animal drug as defined in 21 U.S.C. § 321(v);

(ii) An animal drug that has been determined by regulation of the Secretary of the United States Department of Health and Human Services not to be a new animal drug; or

(iii) An animal feed as defined in 21 U.S.C. § 321(w);

(9) "Solid waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air

pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-products material as defined by the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.;

(10) “Solid waste board” or “board” means a regional solid waste management board or a solid waste service area board, or its successor, created under § 8-6-701 et seq.;

(11) “Solid waste management system” means the entire process of source reduction, storage, collection, transportation, processing, waste minimization, recycling, and disposal of solid wastes by any person engaging in the process as a business or by any municipality, authority, trust, county, or by any combination of a municipality, authority, trust, or county; and

(12) “Transfer station” means a facility that is used to manage the removal, compaction, and transfer of solid waste from collection vehicles and other small vehicles to greater capacity transport vehicles.

History. Acts 1971, No. 237, § 3; A.S.A. 1947, § 82-2703; Acts 1991, No. 751, §§ 1, 2; 1995, No. 547, § 1; 1999, No. 1164, § 61; 2011, No. 1153, § 1; 2013, No. 1127, §§ 5, 6; 2019, No. 910, §§ 2589, 2590; 2019, No. 1067, § 2.

A.C.R.C. Notes. Acts 2019, No. 1067, § 11, provided: “(a) The purpose of this act is to have the Environmental Compliance Resource Program operational and to make illegal dump control officers unnecessary on or before May 1, 2020.

“(b) If legislation concerning the transformation of the Arkansas Department of Environmental Quality is enacted during this Regular Session of the General Assembly, the Arkansas Code Revisor and

the Arkansas Code Revision Commission shall correct the references to the Arkansas Department of Environmental Quality consistent with those laws”.

Amendments. The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (2)(A); and substituted “division” for “department” in (5)(B)(i).

The 2019 amendment by No. 1067 substituted “Facilities with an agriculture exemption under § 8-6-2019” for “Agricultural operations as defined in § 8-6-509” in (5)(B)(ii).

8-6-204. Criminal, civil, and administrative penalties.

(a) CRIMINAL PENALTIES.

(1)(A) Any person who violates any provision of this subchapter, who commits any unlawful act under this subchapter, or who violates any rule or order of the Arkansas Pollution Control and Ecology Commission or the Division of Environmental Quality shall be guilty of a misdemeanor.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than one (1) year or a fine of not more than twenty-five thousand dollars (\$25,000), or subject to both such fine and imprisonment. For

the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) It shall be illegal for a person to:

(i) Violate any provision of this subchapter, commit any unlawful act under this subchapter, or violate any rule or order of the commission or division, and leave the state or remove his or her person from the jurisdiction of this state;

(ii) Through the course of activities prohibited by this section, purposely, knowingly, or recklessly cause pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby create a substantial likelihood of adversely affecting human health, animal or plant life, or property; or

(iii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under this chapter, or falsify, tamper with, or render inaccurate any monitoring device, testing method, or record required to be maintained under this chapter.

(B)(i) A person who violates this subdivision (a)(2) shall be guilty of a felony.

(ii) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than five (5) years or a fine of not more than fifty thousand dollars (\$50,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(3) Notwithstanding the limits on fines set in subdivisions (a)(1) and (2) of this section, if a person convicted under subdivision (a)(1) or subdivision (a)(2) of this section has derived or will derive pecuniary gain from commission of the offenses, then he or she may be sentenced to pay a fine not to exceed two (2) times the amount of the pecuniary gain.

(b) CIVIL PENALTIES. The division is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter and of any rules, orders, permits, licenses, or plans issued pursuant to this subchapter;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the division and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this subchapter and of any rules, permits, or plans issued pursuant to this subchapter; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

(c) Any person who violates any provision of this subchapter and rules, permits, or plans issued pursuant to this subchapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation. Each day of a continuing violation may be deemed a separate violation for purposes of civil penalty assessment. No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with rules adopted by the commission. All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229. These administrative procedures may also be used to recover all costs, expenses, and damages to the division and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including natural resource damages.

(d) As an alternative to the limits on civil penalties set in subsections (b) and (c) of this section, if a person found liable in actions brought under subsection (b) or subsection (c) of this section has derived pecuniary gain from commission of the offenses, then he or she may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

(e)(1) All moneys collected as reimbursement for expenses, costs, and damages to the division shall be deposited into the operating fund of the division.

(2) All moneys collected as civil penalties pursuant to this section shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

(3)(A) The Director of the Division of Environmental Quality, in his or her discretion, may authorize in-kind services or cash contributions as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

(B) The violator may provide in-kind services or cash contributions as directed by the division by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the in-kind services, by arranging and providing financing for the in-kind services, or by other financial arrangements initiated by the division in which the violator and the division retain no monetary benefit, however remote.

(C) The in-kind services shall not duplicate or augment services already provided by the division through appropriations of the General Assembly.

(4) All moneys collected to cover the costs, expenses, or damages of other agencies or subdivisions of the state, including natural resource damages, shall be distributed to the appropriate governmental entity.

(f) The culpable mental states referenced throughout this section shall have the definitions set out in § 5-2-202.

(g) Solicitation or conspiracy, as defined by the Arkansas Criminal Code at § 5-3-301 et seq. and § 5-3-401 et seq., to commit any criminal act proscribed by this section and §§ 8-4-103 and 8-7-204 shall be punishable as follows:

(1) Any solicitation or conspiracy to commit an offense under this section which is a misdemeanor shall be a misdemeanor subject to fines not to exceed fifteen thousand dollars (\$15,000) per day of violation or imprisonment for more than six (6) months, or both such fine and imprisonment;

(2) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to fines up to thirty-five thousand dollars (\$35,000) per day or imprisonment up to two (2) years, or both such fine and imprisonment;

(3) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of one hundred thousand dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to fines up to seventy-five thousand dollars (\$75,000) per day or imprisonment up to seven (7) years, or both such fine and imprisonment; and

(4) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to fines up to one hundred fifty thousand dollars (\$150,000) per day or imprisonment up to fifteen (15) years, or both such fine and imprisonment.

(h) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environmental effects caused by his or her activities may be considered by the court to be restitution as contemplated by § 5-4-301.

(i) A business organization and its agents or officers may be found liable under this section in accordance with the standards set forth in § 5-2-501 et seq. and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).

History. Acts 1971, No. 237, § 11; 1983, No. 666, § 3; A.S.A. 1947, § 82-2711; Acts 1987, No. 529, § 2; 1991, No. 1057, §§ 4, 5; 1993, No. 731, § 4; 1995, No. 547, § 2; 1995, No. 895, § 5; 1999, No. 582, § 1; 2005, No. 1824, § 6; 2019, No. 315, §§ 522-526; 2019, No. 910, §§ 2591-2597.

Amendments. The 2019 amendment by No. 315 deleted "regulation" following "rule" in (a)(1)(A) and (a)(2)(A)(i); deleted

"regulations" following "rules" in (b)(1) and (b)(4); and in (c), deleted "regulations" preceding "rules" in the first sentence, and substituted "rules" for "regulations" in the third sentence.

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(1)(A) and (e)(3)(A); and substituted "division" for "department" throughout the section.

8-6-205. Illegal actions — Rebuttable presumption — Acts or omissions by third party.

(a) It shall be illegal for any person:

(1) To violate any provision of this subchapter or any rule or order of the Arkansas Pollution Control and Ecology Commission issued pursuant to this subchapter or of a permit issued under this subchapter by the Division of Environmental Quality;

(2) To construct, install, alter, modify, use, or operate any solid waste processing or disposal facility or disposal site without a permit from the division;

(3) To dispose of solid wastes at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the division. However, no provision of this subchapter shall be construed so as to prevent an individual from disposing of solid wastes resulting from his or her own household activities on his or her own land if the disposal does not create a public or private nuisance or a hazard to health and does not violate a city ordinance or other law and does not involve the open dumping of garbage;

(4) To dump, deposit, throw, or in any manner leave or abandon any solid wastes, including, but not limited to, garbage, tin cans, bottles, rubbish, refuse, or trash upon property owned by another person without the written permission of the owner or occupant of the property or upon any public highway, street, road, public park or recreation area, or any other public property except as designated for disposal of waste; or

(5) To sort, collect, transport, process, or dispose of solid waste contrary to the rules or orders of the division or in such a manner or place as to create or be likely to create a public nuisance or a public health hazard or to cause or be likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

(b) There is created a rebuttable presumption that shall arise in any administrative, civil, or criminal action under this subchapter to the effect that, if it can be proved that one (1) or more items of solid waste bear the name or names of one (1) or more persons in such a form as to indicate that the person or persons were the owners of those items and those items were unlawfully disposed of, then the person or persons are presumed to have committed the unlawful act of disposal.

(c) No person shall be liable for any violation of this subchapter or of any rule or order of the commission issued pursuant to this subchapter if the violation results solely from the act or omission of a third party, unless the person has knowingly allowed the violation to occur through acquiescence, acts, or omissions.

History. Acts 1971, No. 237, § 10; 1983, No. 666, § 2; A.S.A. 1947, § 82-2710; Acts 1987, No. 730, § 1; 1989, No. 260, § 2; 1995, No. 547, § 3; 1997, No. 1206, § 1; 2001, No. 1069, § 1; 2009, No. 1199, § 6; 2019, No. 315, §§ 527-529; 2019, No. 910, §§ 2598, 2599.

Amendments. The 2019 amendment by No. 315 deleted “regulation” following

“rule” in (a)(1) and (c); and deleted “regulations” following “rules” in (a)(5).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1); and substituted “division” for “department” throughout (a).

8-6-206. Proceedings in circuit court.

(a) Except as provided under subsection (b) of this section, a person adversely affected by a violation of this subchapter or of any rules or orders issued pursuant to this subchapter shall have a private right of action for relief against the violation.

(b)(1) A person may file a verified complaint in a circuit court of competent jurisdiction as described in subdivision (b)(2) of this section against a defendant if facts establish that the defendant engaged in an act or omission that results in any one (1) or more of the following in this state:

(A) The illegal dumping of solid waste;

(B) The creation or participation in the creation or furtherance of an illegal dump site;

(C) The disposal of solid waste that results from the property owner's own household activities on his or her land if the disposal:

(i) Creates a public or private nuisance or a hazard to health; or

(ii) Involves the open dumping of garbage; and

(D) Any other environmental violation concerning the illegal dumping of solid waste in violation of this chapter or the Used Tire Recycling and Accountability Act, § 8-9-401 et seq.

(2) The verified complaint shall be filed in the circuit court of the county where the:

(A) Activity described in the verified complaint occurs;

(B) Situation described in the verified complaint exists; or

(C) Defendant resides.

(3)(A) If the plaintiff is seeking a preliminary injunction or temporary restraining order without notice to the defendant, the requirements of Rule 65(b)(1) and (c) of the Arkansas Rules of Civil Procedure shall be met and the procedures in this subdivision (b)(3) apply.

(B) The circuit court shall enter a temporary order that directs the defendant to perform the following within ten (10) days from the date the temporary order is served on the defendant:

(i) Remove the solid waste from the public or private property or otherwise remediate the environmental violation;

(ii) Dispose of any solid waste or other material at:

(a) A permitted solid waste transfer station, landfill, composting facility, or incinerator; or

(b) A recycling center; and

(iii) File with the circuit court a disposal receipt from the permitted solid waste transfer station, landfill, composting facility, or incinerator where the solid waste was disposed.

(C) The plaintiff shall have the temporary order served on the defendant and file proof of service with the circuit court.

(D)(i) To request relief from the temporary order, the defendant may file a motion with the circuit court within ten (10) days from the date the temporary order is served.

(ii) The circuit court shall hold a hearing within fourteen (14) days after the motion is filed and serve notice on all parties subject to the temporary order.

(iii) At the hearing, the circuit court shall hear all evidence and testimony and enter an order to either dismiss the original or temporary order or make the temporary order permanent.

(E) The circuit court may grant a continuance for the hearing.

(F) The parties at the hearing may be represented by counsel.

(4) If subdivision (b)(3)(A) of this section does not apply and notice is required, then the plaintiff shall comply with the applicable notice provisions in the Arkansas Rules of Civil Procedure before issuance of a temporary order.

(5)(A) If the temporary order is made permanent by the circuit court after a hearing on the merits or because the defendant failed to timely file a motion requesting a hearing on the served temporary order, the defendant shall within ten (10) days after its filing:

(i) Remove or cause to be removed from the public or private property the solid waste that has been illegally dumped on the public or private property; and

(ii) Properly dispose of the solid waste in a permitted landfill or other facility approved for disposal by the Division of Environmental Quality.

(B)(i) If the defendant has not removed the solid waste from the public or private property and properly disposed of it after ten (10) days from the date of the filing of the order, the plaintiff or the owner of the property may cause the solid waste to be removed or otherwise remediated and file a cost statement with the circuit court.

(ii) The circuit court shall review the cost statement and determine whether the cost statement is reasonable.

(iii) If the circuit court determines the cost statement is reasonable, the circuit court shall enter an order on the judgment docket of the circuit court in the amount of the cost statement as a judgment against the defendant.

(c) A judgment entered under this section may be enforced in the same manner as any other judgment.

(d) A judgment entered under this section is a final decision for purposes of appellate review.

(e) In addition to any judgment ordered under this section, a party against whom a judgment has been entered under this section is subject to any other applicable criminal, civil, or administrative penalties under law or rule, or both.

(f) The limitations and exemptions under §§ 8-6-2018 and 8-6-2019 apply to subsection (b) of this section.

History. Acts 1971, No. 237, § 12; A.S.A. 1947, § 82-2712; Acts 2019, No. 315, § 530; 2019, No. 1067, § 3.

A.C.R.C. Notes. Acts 2019, No. 1067, § 11, provided: “(a) The purpose of this act

is to have the Environmental Compliance Resource Program operational and to make illegal dump control officers unnecessary on or before May 1, 2020.

“(b) If legislation concerning the trans-

formation of the Arkansas Department of Environmental Quality is enacted during this Regular Session of the General Assembly, the Arkansas Code Revisor and the Arkansas Code Revision Commission shall correct the references to the Arkansas Department of Environmental Quality consistent with those laws”.

Publisher's Notes. Acts 2019, No. 1067, § 3 specifically amended this section as amended by Acts 2019, No. 315.

Amendments. The 2019 amendment by No. 315 deleted “regulations” following “any rules”.

The 2019 amendment by No. 1067 substituted “Proceedings in circuit court” for “Private right of action” in the section heading; added the designation (a); in (a), substituted “Except as provided under subsection (b) of this section, a” for “Any”, and “to this subchapter” for “thereto”; and added (b) through (f).

8-6-207. Powers and duties of the division and commission generally.

(a) The Division of Environmental Quality or its successor shall have the following powers and duties:

(1) To administer and enforce all laws and rules relating to solid waste disposal;

(2) To advise, consult, and cooperate with appropriate federal, state, interstate, and local units of government and with affected groups and industries in the formation of plans and the implementation of a solid waste management program pursuant to this subchapter;

(3) To accept and administer loans and grants from the United States Government and from such other sources as may be available to the Arkansas Pollution Control and Ecology Commission for the planning, construction, and operation of solid waste management systems and disposal facilities;

(4) To develop a statewide solid waste management plan in cooperation with municipal and county governments and solid waste boards which gives emphasis to regional planning, where feasible;

(5) To require to be submitted and to approve plans and specifications for the construction and operation of solid waste disposal facilities and sites and to inspect the construction and operation thereof;

(6) To issue, continue in effect, revoke, modify, or deny, under such conditions as the division may prescribe, permits for the establishment, construction, operation, or maintenance of solid waste management systems, disposal sites, and facilities;

(7) To make investigations, inspections, and to hold such hearings, after notice, as the division may deem necessary or advisable for the discharge of duties under this subchapter and to ensure compliance with this subchapter and any orders and rules issued pursuant thereto;

(8) To make, issue, modify, revoke, and enforce orders, after notice and opportunity for adjudicatory review by the commission, prohibiting violation of any of the provisions of this subchapter or of any rules issued pursuant to this subchapter, and to require the taking of such remedial measures for solid waste disposal as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;

(9) To institute proceedings in the name of the division in any court of competent jurisdiction to compel compliance with and to restrain

violation of the provisions of this subchapter or any rules and orders issued pursuant thereto and to require the taking of such remedial measures for solid waste disposal as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;

(10) To initiate, conduct, and support research, demonstration projects, and investigations and to coordinate with all state agency research programs pertaining to solid waste disposal and management systems;

(11) To make periodic inspections of all solid waste facilities or locations permitted under this subchapter or the Used Tire Recycling and Accountability Act, § 8-9-401 et seq., to ensure compliance with all requirements of this subchapter and the rules promulgated under this subchapter and to make a final inspection of closed or abandoned solid waste disposal sites to determine compliance with rules for proper closure and proper filling and drainage of the site;

(12) To issue, continue in effect, revoke, modify, or deny, under such conditions as the division may prescribe, permits for the establishment, construction, operation, or maintenance of transfer stations;

(13) To regulate and license persons engaged in the business of transporting used and waste tires;

(14) To establish minimum standards for the operation of a solid waste collection system; and

(15) Upon the petition of a solid waste board or upon the division's own initiative to revoke, modify, or deny a permit for a solid waste disposal facility or a permit for any other element of a solid waste management system based upon noncompliance with an approved regional solid waste management plan of a solid waste board.

(b) The commission shall have the following powers and duties:

(1)(A) Promulgation of rules implementing the substantive statutes charged to the division for administration.

(B) In promulgation of such rules, prior to the submittal to public comment and review of any rule or change to any rule that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule on the people of the State of Arkansas, including those entities that will be subject to the rule.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent rule;

(2) Promulgation of rules and procedures not otherwise governed by applicable law which the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules governing administrative procedures for challenging or contesting division actions;

(4) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Division of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the division, provided, however, that the director shall always remain within the plenary authority of the Governor and the Secretary of the Department of Energy and Environment;

(8) Upon a majority vote, initiate review of any director's decision;

(9) To establish policies and standards for effective solid waste disposal and management systems; and

(10) To adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules for the source reduction, minimization, recycling, collection, transportation, processing, storage, and disposal of solid wastes, including, but not limited to, the disposal site location and the construction, operation, and maintenance of the disposal site or disposal process as necessary or appropriate to implement or effectuate the purposes and intent of this subchapter and the powers and duties of the commission under this subchapter.

History. Acts 1971, No. 237, § 7; 1983, No. 667, § 1; A.S.A. 1947, § 82-2707; Acts 1991, No. 751, § 3; 1997, No. 1219, § 8; 1999, No. 1164, § 62; 2019, No. 315, §§ 531-537; 2019, No. 910, §§ 2600-2607; 2019, No. 980, § 1.

A.C.R.C. Notes. Acts 2019, No. 315, § 533, amended subdivision (a)(11) of this section to replace "regulations" with "rules" in the former phrase "not less than quarterly in accordance with regulations promulgated by the commission". However, Acts 2019, No. 980, § 1, specifically repealed this phrase.

Amendments. The 2019 amendment by No. 315 substituted "and rules" for "rules and regulations" in (a)(7); deleted "and regulations" following "rules" in (a)(8), following the last occurrence of "rules" in (a)(11), and in (b)(1)(A), (b)(3), and (b)(10); deleted "regulations" follow-

ing "rules" in (a)(9) and (b)(2); substituted the first two occurrences of "rules" for "regulations" in (a)(11); rewrote (b)(1)(B); and substituted "rule" for "regulation" in (b)(1)(E).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (a) and in (b)(4); substituted "division" for "department" throughout the section; and added "and the Secretary of the Department of Energy and Environment" in (b)(7).

The 2019 amendment by No. 980 substituted "inspections of all solid waste facilities or locations permitted under this subchapter or the Used Tire Recycling and Accountability Act, § 8-9-401 et seq." for "inspections not less than quarterly in accordance with regulations promulgated

by the commission of all solid waste disposal facilities or sites permitted under this subchapter” in (a)(11).

8-6-208. Existing rules, orders, etc.

(a) All existing rules of the Arkansas Pollution Control and Ecology Commission relating to subjects embraced within this subchapter shall remain in full force and effect until expressly repealed, amended, or superseded by the commission.

(b) All orders entered, permits granted, and pending legal proceedings instituted by the commission relating to subjects embraced within this subchapter shall remain unimpaired and in full force and effect until superseded by actions taken by the commission under this subchapter.

(c) No existing civil or criminal remedies, public or private, for any wrongful action shall be excluded or impaired by this subchapter. Nothing in this subchapter shall be construed to limit or supersede the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or any action taken by the commission under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

History. Acts 1971, No. 237, § 12; A.S.A. 1947, § 82-2712; Acts 2019, No. 315, § 538.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (a).

8-6-211. Municipal solid waste management systems.

(a) All municipalities shall provide a solid waste management system which will adequately provide for the collection and disposal of all solid wastes generated or existing within the incorporated limits of the municipality or in the area to be served and in accordance with the rules and orders of the Arkansas Pollution Control and Ecology Commission. The governing body of the municipality may enter into agreements with one (1) or more other municipalities, counties, a regional solid waste management district, private persons or trusts, or with any combination thereof, to provide a solid waste management system, or any part of a system, for the municipality, but the agreement shall not relieve the parties of their responsibilities under this subchapter.

(b)(1) The governing body of the municipality shall have the authority to levy and collect such fees and charges and require such licenses as may be appropriate to discharge its responsibility under this subchapter, and the fees, charges, and licenses shall be based on a fee schedule as set forth in an ordinance.

(2)(A) Without limitation on otherwise appropriate collection procedures, a municipality may collect its fees and service charges through either its own system of periodic billing or by entering the fees and service charges on the tax records of the county and then collecting the fees and service charges with the personal property taxes on an annual basis.

(B) Further, any fees and service charges billed periodically by the cities which are more than ninety (90) days delinquent on November 1 of each year may be entered on the tax records of the county as a delinquent periodic fee or service charge and may be collected by the county with personal property taxes.

(3)(A)(i) In counties where the fees are entered on the tax records for yearly collection or if the periodic fees and service charges are more than ninety (90) days delinquent as of November 1, the fees and service charges shall be entered on the tax records of the county by the county clerk and shall be collected by the county collector with the personal property taxes.

(ii) The fees and service charges to be collected shall be certified to the county clerk by December 1 each year by an appropriate municipal official or the mayor.

(iii) No county collector shall accept payment of any property taxes where annual fees and service charges or delinquent periodic fees and service charges appear on the county tax records of a taxpayer unless the fees and service charges due are also receipted.

(iv) These funds shall be receipted and deposited into an official account of the county collector, who shall settle the account at least quarterly.

(B) Annual fees and service charges or the delinquent periodic fees and service charges which remain unpaid after the time other property taxes are due shall constitute a lien on the real and personal property of the taxpayer which may be enforced against such property by an action in circuit court.

(C) The amount of any fees and service charges collected shall then be paid to the municipality by the county collector, less four percent (4%) to be retained by the county collector.

(D) In addition, when the county collector maintains a separate tax book for these fees and charges, the county collector may charge an additional two dollars and fifty cents (\$2.50) for collection.

(c) Municipalities may accept and disburse funds derived from grants from the United States Government or state governments, from private sources, or from moneys that may be appropriated from any available funds for the installation and operation of a solid waste management system or any part of a solid waste management system.

(d) Municipalities are authorized to contract for the purchase of land, facilities, vehicles, and machinery necessary to the installation and operation of a solid waste management system either individually or as a party to a regional or county solid waste authority.

(e) The governing body of a municipality shall have the right to establish policies for and enact laws concerning all phases of the operation of a solid waste management system, including hours of operation, the character and kinds of wastes accepted at the disposal site, the separation of wastes according to type by those generating them prior to collection, the type of container for storage of wastes, the prohibition of the diverting of recyclable materials by persons other

than the generator or collector of the recyclable material, the prohibition of burning of wastes, the pretreatment of wastes, and such other rules as may be necessary or appropriate, so long as the laws, policies, and rules are consistent with, in accordance with, and not more restrictive than those adopted by, under, or pursuant to this subchapter or any laws, rules, or orders adopted by state law or incorporated by reference from federal law, the commission, or the regional solid waste management boards or regional solid waste management districts, unless:

(1) There exists a fully implemented comprehensive area-wide zoning plan and corresponding laws or ordinances covering the entire municipality; or

(2) The municipality has made a request to the board or district to adopt a more restrictive rule, order, or standard and no public hearing has been held within sixty (60) days or the request has not been acted upon within ninety (90) days.

History. Acts 1971, No. 237, § 5; A.S.A. 1947, § 82-2705; Acts 1991, No. 1007, § 1; 1993, No. 1280, § 3; 1995, No. 547, § 4; 2001, No. 1720, § 2; 2019, No. 315, §§ 539, 540.

Amendments. The 2019 amendment deleted “regulations” following “rules” in (a); and deleted “regulations” following “any laws, rules” in the introductory language of (e).

8-6-214. Records and examinations.

(a) The owner or operator of any permitted facility or site shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, take such samples, perform such tests, and provide such other information to the Division of Environmental Quality as the Director of the Division of Environmental Quality may reasonably require.

(b) The division or any authorized employee or agent may examine and copy any books, papers, records, or memoranda pertaining to the operation of the facility or site.

(c) The division or any authorized employee or agent may enter upon any public or private property for the purpose of obtaining information or conducting surveys or investigations necessary or appropriate for the purpose of this subchapter.

(d)(1)(A) Any records, reports, or information obtained under this subchapter and any permits, permit applications, and related documentation shall be available to the public for inspection and copying.

(B) Upon a satisfactory showing to the director that the records, reports, permits, documentation, or information, or any part thereof, if made public, would divulge methods or processes entitled to protection as trade secrets, then the director shall consider, treat, and protect such records, reports, or information as confidential.

(2)(A) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing restriction of confidentiality to other officers, employees, or authorized representatives of this state or of the

United States if the owner or operator of the facility to which the information pertains is informed at least two (2) weeks prior to the transmittal and if the information has been acquired by the division under the provisions of this subchapter.

(B) The provisions of this subdivision (d)(2) shall not be construed to limit the division's authority to release confidential information during emergency situations.

(3) Any violation of this subsection shall be unlawful and constitute a misdemeanor.

History. Acts 1971, No. 237, § 9; 1983, No. 666, § 1; A.S.A. 1947, § 82-2709; Acts 1999, No. 1164, § 63; 2019, No. 910, § 2608.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" twice in (a); and substituted "division" for "department" in (b) and made similar changes throughout the section.

8-6-219. Applicants for permits — Applicability.

(a) An applicant for a new permit under this subchapter or the modification or transfer of a permit shall be a person, partnership, corporation, association, the State of Arkansas, a political subdivision of the state, an improvement district, a sanitation authority, or a solid waste board.

(b) This section shall not apply to permits for landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character.

(c) [Repealed.]

History. Acts 1991, No. 751, § 4; 2019, No. 693, § 13.

Amendments. The 2019 amendment repealed (c).

8-6-220. Yard waste — Definitions.

(a)(1)(A) Except as provided in subdivision (a)(2) of this section, it is illegal for yard waste to be placed in a solid waste management facility solely for the purpose of disposal, except for fugitive amounts of yard waste.

(B) A permitted solid waste landfill may collect landfill gas from the fugitive amounts of yard waste for conversion to energy.

(2)(A) If authorized by the Division of Environmental Quality through a permit modification process including a public notice and comment period, yard waste may be accepted by a permitted solid waste landfill that operates a landfill gas-to-energy system for the recovery and use of landfill gas as a renewable energy fuel source.

(B) The division shall consider, at a minimum, the following before authorizing yard waste to be accepted by a solid waste landfill for disposal:

(i) The number and types of permitted compost facilities accepting yard waste within the service areas of the solid waste landfill;

(ii) The environmental impact of the proposed change in disposing of yard waste at a solid waste landfill instead of a permitted compost facility;

(iii) The financial impact to each permitted compost facility located within the service area of the solid waste landfill;

(iv) Whether the regional solid waste management board hosting the solid waste landfill and hosting a permitted compost facility within the solid waste landfill's service area supports the request;

(v) The amount of yard waste the solid waste landfill intends to accept and the basis for estimating the volume of yard waste to be disposed in the solid waste landfill;

(vi) The financial impact to residents and industry within the service area of the solid waste landfill;

(vii) The location of the solid waste landfill;

(viii) The location within the solid waste landfill for the placement of yard waste;

(ix) The plans to offset the effects of disposing of yard waste on the volume reduction for municipal waste disposal;

(x) A description and timeline for the landfill gas collected from the yard waste to become a renewable energy fuel source;

(xi) The design and efficiency of the landfill gas collection system;

(xii) A list of purchase power agreements that guarantee the collection and use of the landfill gas collected from the yard waste for energy conversion; and

(xiii) Other information as may be required by the division.

(C) Landfill gas recovered through the landfill gas-to-energy system shall be utilized for the generation of electricity or used as a substitute for conventional fuels.

(b)(1) In addition to composting requirements for regional solid waste management districts set forth in § 8-6-719, each district shall furnish yard waste reduction or usage and/or opportunities to ensure that its residents are provided with the availability to choose, based upon need by population or area, ways and means of usage, reduction, reuse, or composting of yard waste.

(2) Such choices of yard waste reduction or usage shall be submitted to the division for approval and shall become an integral part of the district's solid waste management plan.

(c) As used in this section:

(1) "Fugitive amounts of yard waste" means small quantities that escape the approved methods of usage, reduction, reuse, or composting of yard waste;

(2) "Landfill gas-to-energy system" means the process of collecting, storing, and converting landfill gas to electricity for a direct fuel use or other use as a substitute for conventional fuels, including without limitation flaring for system testing, system maintenance, or proving capacity for an intended energy use; and

(3) "Yard waste" means grass clippings, leaves, and shrubbery trimmings.

History. Acts 1991, No. 751, § 4; 1993, No. 479, § 3; 1995, No. 547, § 6; 2009, No. 1220, § 1; 2019, No. 910, §§ 2609-2612.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (a)(2)(A); and substituted "division" for "department" throughout the section.

8-6-221. Review of rules.

All rules adopted under this subchapter shall be reviewed by the House Committee on Public Health, Welfare, and Labor and Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

History. Acts 1991, No. 751, § 4; 1997, No. 179, § 3; 2019, No. 315, § 541.

Amendments. The 2019 amendment

deleted "and regulations" following "rules" in the section heading; and deleted "and regulations" following "All rules".

8-6-223. Household hazardous waste storage or processing centers — Permit required.

(a) It is unlawful for a person to own or operate a household hazardous waste storage or processing center, as defined in § 8-6-203, without first obtaining from the Division of Environmental Quality a transfer station permit or another permit that the division deems appropriate and that meets the requirements of this section.

(b)(1) The division shall not issue, modify, or renew a permit for a household hazardous waste storage or processing center regulated under this section without the permit applicant's first demonstrating to the division's satisfaction the applicant's financial ability to ensure proper removal and disposal of household hazardous waste located at the household hazardous waste storage or processing center under this section.

(2) The amount of financial assurance required under this section shall be equal to or greater than one hundred fifty percent (150%) of a third party's cost of disposal of the maximum permitted amount of household hazardous waste at a facility permitted under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., for the treatment, storage, and disposal of hazardous waste.

(3) A detailed disposal estimate under this section shall be prepared by an independent professional consultant.

(c) The permittee or applicant shall demonstrate financial ability to ensure proper removal and disposal of the household hazardous waste at its household hazardous waste storage or processing center by:

(1) Obtaining insurance that specifically covers the costs of disposal as required by this section;

(2) Obtaining a letter of credit;

(3) Obtaining a bond or other surety instrument;

(4) Creating a trust fund or escrow account;

(5) Combining any of the instruments in subdivisions (c)(1)-(4) of this section; or

(6) Any other financial instrument approved by the Director of the Division of Environmental Quality.

(d) A financial instrument required by this section shall:

(1) Be posted to the benefit of the division;

(2) Provide that the financial instrument cannot be cancelled without sixty (60) days' prior written notice addressed to the division's legal division chief as evidenced by a signed, certified mail with a return receipt request; and

(3) Be reviewed by the division upon receipt of the cancellation notice to determine whether the division should initiate procedures to revoke or suspend the household hazardous waste storage or processing center's permit and whether the division should take possession of the funds guaranteed by the financial assurance mechanism.

(e) Before the division may release a financial assurance mechanism, the division shall inspect the household hazardous waste storage or processing center to determine to the division's satisfaction that no household hazardous waste is located at the household hazardous waste storage or processing center.

(f) The division is not responsible for the removal or disposal of household hazardous waste regulated under this section.

(g) Before an application for a permit is submitted to the division, a household hazardous waste storage or processing center shall apply for a certificate of need from the regional solid waste management board that has jurisdiction over the proposed site and shall follow the procedures and rules established under § 8-6-708.

(h) A household hazardous waste storage or processing center shall submit a permit application to the division within ninety (90) days of the approval of the certificate of need.

(i) If a certificate of need is not approved under subsection (g) of this section or a final determination is made by the division denying the permit application, the household hazardous waste storage or processing center shall cease all collection, storage, or processing activity and properly dispose of or recycle all materials within ninety (90) days.

(j) [Repealed.]

(k) A household hazardous waste storage or processing center that is operating before July 27, 2011, is exempt from obtaining a certificate of need under subsection (g) of this section.

(l) A permit under this section is not required for recyclable materials collection centers or systems that are provided by a city, county, solid waste district, or regional solid waste management district that stores household hazardous waste in quantities of less than one hundred ten gallons (110 gal.) of each household hazardous waste, not to exceed an accumulated waste amount of five thousand gallons (5,000 gal.) of liquid waste or ten thousand pounds (10,000 lbs.) of nonliquid waste.

History. Acts 2011, No. 1153, § 2; 2019, No. 910, §§ 2613-2616.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (a) and (c)(6); substituted "division" for "department" throughout the section; and repealed (j).

SUBCHAPTER 3 — COUNTY SOLID WASTE MANAGEMENT SYSTEM AID FUND

SECTION.

8-6-307. Transfer of funds — Exemption.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-6-307. Transfer of funds — Exemption.

(a) The moneys saved from Acts 1985, No. 994, which reduced contributions made by the state for state employees who are employed by a state agency funded, in whole or in part, with general revenues, shall be set aside and implemented by the Chief Fiscal Officer of the State and the Treasurer of State in the amount and in accordance with procedures set forth in this section.

(b)(1) Beginning the month after the month in which such reductions in retirement contributions occur, the Chief Fiscal Officer of the State shall determine the amount of the general revenue savings, by fund or fund account, based upon the previous month's payroll deductions for retirement contributions to the Public Employees' Retirement System.

(2) During each fiscal year, the Chief Fiscal Officer of the State shall cause to be transferred on his or her books and those of the Treasurer of State the amount of the monthly general revenue savings from each affected fund or fund account to the Revenue Holding Fund Account before the close of business on the last day of each month until an aggregate of five million dollars (\$5,000,000) of general revenue savings during each fiscal year has been transferred to the Revenue Holding Fund Account from those sources, and monthly transfers of the general revenue savings to the Revenue Holding Fund Account shall cease for the remainder of that fiscal year.

(c) The Treasurer of State shall, after providing for the distribution of general revenues available for distribution, transfer the total amount of such general revenue savings as certified to the Treasurer of State by the Chief Fiscal Officer of the State from the Revenue Holding Fund Account to the County Solid Waste Management System Aid Fund, to be used to make monthly distributions therefrom in the manner provided by law to the respective counties of this state to be used for the

support of the county solid waste management system as provided in this subchapter.

(d) The Division of Correction is exempt from the provisions of this section.

History. Acts 1985, No. 986, § 4; 1985 (1st Ex. Sess.), No. 5, § 1; A.S.A. 1947, § 13-567; Acts 1987, No. 551, § 4; 2019, No. 910, § 688.

Amendments. The 2019 amendment substituted “Division of Correction” for “Department of Corrections” in (d).

SUBCHAPTER 4 — LITTER CONTROL ACT

SECTION.

8-6-405. Injunction.

8-6-406. Littering and commercial littering.

8-6-412. Enforcement generally. [Effective May 1, 2020.]

SECTION.

8-6-418. Possession or use of glass containers on navigable waterways — Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-6-405. Injunction.

In addition to all other remedies provided by this subchapter, the Division of Environmental Quality, the Attorney General, the prosecuting attorney of a county where any violation of any provision of this subchapter occurs, or any citizen, resident, or taxpayer of the county where a violation of any provision of this subchapter occurs may apply to the circuit court or the judge in vacation of the county where the alleged violation occurred for an injunction to restrain, prevent, or abate the maintenance and storage of litter, junk motor vehicles, old vehicle tires, or inoperative or discarded household appliances in violation of any provision of this subchapter.

History. Acts 1977, No. 883, § 16; A.S.A. 1947, § 82-3916; Acts 1991, No. 516, § 1; 1999, No. 1164, § 64; 2019, No. 910, § 2617.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-6-406. Littering and commercial littering.

(a) It is unlawful to drop, deposit, discard, or otherwise dispose of litter upon any public or private property in this state or upon or into any river, lake, pond, or other stream or body of water within this state, unless:

(1) The property has been designated by the Division of Environmental Quality as a permitted disposal site;

(2) The litter is placed into a receptacle intended by the owner or tenant in lawful possession of that property for the deposit of litter, if it is deposited in such a manner as to prevent the litter from being carried away or deposited by the elements upon any part of the private or public property or waters; or

(3)(A) The person is the owner or tenant in lawful possession of the property and the litter remains upon the property and the act does not create a public health or safety hazard, a public nuisance, or a fire hazard.

(B) However, a property owner shall not be held responsible for the actions of his or her tenant.

(b)(1)(A) A person who violates this section upon conviction is guilty of a violation and shall be fined an amount not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) and is subject to community service under subdivision (b)(2)(A) of this section.

(B) A person who violates this section for a second or subsequent offense within three (3) years of a prior offense upon conviction is guilty of a violation and shall be fined an amount not less than two hundred dollars (\$200) and not more than two thousand dollars (\$2,000) and is subject to community service under subdivision (b)(2)(A) of this section.

(2)(A) In addition to any sentence provided for under this subsection, the court upon conviction shall impose the following penalty of community service:

(i) For a first offense, not more than eight (8) hours; or

(ii) For a second or subsequent offense, not more than twenty-four (24) hours.

(B) A person may also be required by the court as a part of his or her sentence to remove litter from alongside highways and at other appropriate locations for any prescribed period.

(3) A person convicted of a violation of this section who fails to pay any fines assessed in accordance with the findings and orders of the court shall have his or her driver's license suspended for six (6) months by the Department of Finance and Administration upon receipt by the department of an order of denial of driving privileges from the court under this section.

(c)(1) A person who violates this section and who is found to have committed the violation in furtherance of or as a part of a commercial enterprise, whether or not that commercial enterprise is the disposal of

wastes, upon conviction is guilty of commercial littering and is guilty of a Class A misdemeanor.

(2) A person convicted of commercial littering may be required to remove litter disposed of in violation of this subchapter.

(d) All or any portion of the fines, community service, and imprisonment penalties provided by this section may be suspended by the court if the violator agrees to remove litter from alongside highways and at other appropriate locations for a prescribed period.

History. Acts 1977, No. 883, § 4; A.S.A. 1947, § 82-3904; Acts 1999, No. 1164, § 65; 2015, No. 1264, § 4; 2019, No. 910, § 2618.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1).

8-6-412. Enforcement generally. [Effective May 1, 2020.]

(a) All Arkansas-certified law enforcement officers:

(1) Shall enforce this subchapter;

(2) May issue citations to or arrest persons violating any provision of this subchapter; and

(3)(A) May serve and execute all warrants, citations, and other process issued by the courts in enforcing this subchapter.

(B) In addition, mailing by registered mail of the process to the person’s last known place of residence shall be deemed as personal service upon the person charged.

(b) [Repealed.]

(c)(1) All certified law enforcement officers may serve and execute all warrants, citations, and other process issued by the courts in enforcing this subchapter.

(2) In addition, mailing by registered mail of the process to the person’s last known place of residence shall be deemed as personal service upon the person charged.

History. Acts 1977, No. 883, § 3; A.S.A. 1947, § 82-3903; Acts 1999, No. 386, § 1; 2005, No. 75, § 1; 2007, No. 377, § 1; 2019, No. 1067, § 4.

A.C.R.C. Notes. Acts 2019, No. 1067, § 11, provided: “(a) The purpose of this act is to have the Environmental Compliance Resource Program operational and to make illegal dump control officers unnecessary on or before May 1, 2020.

“(b) If legislation concerning the transformation of the Arkansas Department of

Environmental Quality is enacted during this Regular Session of the General Assembly, the Arkansas Code Revisor and the Arkansas Code Revision Commission shall correct the references to the Arkansas Department of Environmental Quality consistent with those laws”.

Publisher’s Notes. For text of section effective until May 1, 2020, see the bound volume.

Amendments. The 2019 amendment repealed (b).

8-6-418. Possession or use of glass containers on navigable waterways — Definitions.

(a)(1) Except for containers for medicinal substances contained in a first-aid kit or prescribed by a licensed physician, and except as provided under subdivision (a)(2) of this section, no person shall possess

or use glass containers within a vessel within the banks of Arkansas's navigable waterways.

(2) A person engaged in removing glass previously discarded by others and found within the banks of an Arkansas navigable waterway may not be charged with a violation of this section on the basis of possession of glass, if while underway and upon a waterway, he or she transports the removed glass securely in a trash container.

(b)(1) A person entering, traveling upon, or otherwise using Arkansas's navigable waterways by canoe, kayak, innertube, or other vessel easily susceptible to swamping, tipping, rolling, or otherwise discharging its contents into a waterway, and transporting foodstuffs or beverages shall:

(A) Transport all foodstuffs and beverages in a sturdy container and ensure that the sturdy container is made to seal or lock in the contents to prevent the contents from spilling into the water;

(B)(i) Carry and affix to the vessel a trash container or bag suitable for containing his or her refuse, waste, and trash materials and capable of being securely closed.

(ii) The trash container or bag shall be either a sturdy container, of a construction similar to a sturdy container, or a bag of mesh construction;

(C)(i) Except as provided under subdivision (b)(1)(C)(ii) of this section, transport all his or her refuse, waste, and trash either in a sturdy container or in a trash container to a place where the refuse, waste, and trash may be safely and lawfully disposed of.

(ii) A person engaged in removing items of refuse, waste, and trash materials previously discarded by others and found by him or her within the banks of an Arkansas navigable waterway and that are too large to be transported in a trash container or bag, may not be charged with a violation of this section on the basis of possession and transportation of the refuse, waste, and trash; and

(D) At all times other than when a beverage is securely contained in a sturdy container or a trash container as in subdivisions (b)(1)(A)-(C) of this section, keep the beverage attached to or held within a floating holder or other device designed to prevent the beverage from sinking beneath the surface of the waterway.

(2) Neither a sturdy container nor a trash container may be required of a person traveling without foodstuffs or beverages.

(c)(1) A violation of this section is a violation and each violation may be prosecuted as a separate offense.

(2) Each violation of this section is punishable by a fine of not more than five hundred dollars (\$500).

(d) As used in this section:

(1) "Navigable waterway" means any navigable river, lake, or other body of water used or susceptible to being used in its natural condition by canoe, kayak, innertube, or other vessel easily susceptible to swamping, tipping, or rolling, and located wholly or partly within this state;

- (2) “Sturdy container” does not include a container that is:
- (A) Primarily constructed of styrofoam; or
 - (B) So constructed that it may be easily broken; and
- (3) “Vessel” does not include a houseboat, party barge, johnboat, runabout, ski boat, bass boat, or similar craft not easily susceptible to swamping, tipping, or rolling.

History. Acts 2001, No. 803, § 1; 2003, No. 1101, § 1; 2019, No. 693, § 14.

Amendments. The 2019 amendment

substituted “is a violation” for “shall be a misdemeanor” in (c)(1); and substituted “of this section is” for “shall be” in (c)(2).

SUBCHAPTER 5 — ILLEGAL DUMP ERADICATION AND CORRECTIVE ACTION PROGRAM ACT [REPEALED EFFECTIVE MAY 1, 2020.]

SECTION.

- 8-6-501. Title. [Repealed effective May 1, 2020.]
- 8-6-502. Purpose. [Repealed effective May 1, 2020.]
- 8-6-503. Definitions. [Repealed effective May 1, 2020.]
- 8-6-504. Illegal Dump Eradication and Corrective Action Program. [Repealed effective May 1, 2020.]
- 8-6-505. Proceedings generally. [Repealed effective May 1, 2020.]
- 8-6-506. Criminal, civil, and administrative penalties. [Repealed effective May 1, 2020.]

SECTION.

- 8-6-507. Consequences of unpaid fines and costs. [Repealed effective May 1, 2020.]
- 8-6-508. Enforcement generally. [Repealed effective May 1, 2020.]
- 8-6-509. Agricultural operations. [Repealed effective May 1, 2020.]
- 8-6-510. Effectiveness of regulations and orders. [Repealed effective May 1, 2020.]

A.C.R.C. Notes. Acts 2019, No. 1067, § 11, provided: “(a) The purpose of this act is to have the Environmental Compliance Resource Program operational and to make illegal dump control officers unnecessary on or before May 1, 2020.

“(b) If legislation concerning the transformation of the Arkansas Department of Environmental Quality is enacted during this Regular Session of the General Assembly, the Arkansas Code Revisor and the Arkansas Code Revision Commission shall correct the references to the Arkansas Department of Environmental Quality consistent with those laws”.

While Acts 2019, No. 1067, § 5, specifically repealed this subchapter “effective May 1, 2020”, section 11 of that act appears to assume that should the Environmental Compliance Resource Program established in the Environmental Compliance Resource Act, § 8-6-2001 et seq., become operational before May 1,

2020, then this subchapter is superseded at that point in time, and is permanently repealed on May 1, 2020, whether the program is operational or not on that date.

Publisher’s Notes. This subchapter is repealed by Acts 2019, No. 1067, § 5, effective May 1, 2020. For current law, see the Environmental Compliance Resource Act, § 8-6-2001 et seq.

Acts 2019, No. 1067, § 5, specifically repealed this subchapter as amended by Acts 2019, No. 315.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding

the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the

fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-6-501. Title. [Repealed effective May 1, 2020.]

Publisher's Notes. This section is repealed by Acts 2019, No. 1067, § 5, effective May 1, 2020. For current law, see § 8-6-2001 et seq.

For text of section effective until May 1, 2020, see the bound volume.

8-6-502. Purpose. [Repealed effective May 1, 2020.]

Publisher's Notes. This section is repealed by Acts 2019, No. 1067, § 5, effective May 1, 2020. For current law, see § 8-6-2001 et seq.

For text of section effective until May 1, 2020, see the bound volume.

8-6-503. Definitions. [Repealed effective May 1, 2020.]

As used in this subchapter:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) [Repealed.]

(3) [Repealed.]

(4) "Illegal dump" means any place at which solid waste is placed, deposited, abandoned, dumped, or otherwise disposed of in a manner that is prohibited by this subchapter or other statutes or rules, and which constitutes one (1) of the following:

(A) An attractive nuisance;

(B) A fire, health, or safety hazard;

(C) A potential source of surface or groundwater contamination; or

(D) Other contamination that is hazardous to the public health or endangers the environment;

(5) "Illegal dumping of solid waste" means the illegal placing, depositing, dumping, or causing to be placed, deposited, or dumped by any person any solid waste that is prohibited by this chapter:

(A) In or upon any public or private highway or road, including any portion of the right-of-way thereof;

(B) In or upon any private property into or upon which the public is admitted by easement or license or any private property;

(C) In or upon any public park or other public property, other than the property designated or set aside for such purpose by the governing board or body having charge thereof; or

(D) Upon any property for which a permit has not been issued by the Division of Environmental Quality;

(6) “Illegal dumps control officer” means an individual employed by a duly authorized regional solid waste management district within this state, a county government within this state, or a pollution control inspector or other authorized representative of the division who is empowered to ensure compliance with the provisions of this subchapter;

(7) “Landfill” means a landfill permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., except a landfill where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character;

(8) “Person” means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, city, town, municipal authority, or trust, venture, or other legal entity, however organized; and

(9) “Solid waste” means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954.

History. Acts 1977, No. 380, § 1; A.S.A. 1947, § 82-2729; Acts 1995, No. 502, § 1; 1997, No. 938, § 1; 1997, No. 1207, § 1; 1999, No. 1164, §§ 66, 67; 2009, No. 1199, § 7; 2019, No. 315, § 542; 2019, No. 910, §§ 2619, 2620.

Publisher’s Notes. This section is repealed by Acts 2019, No. 1067, § 5, effective May 1, 2020. For current law, see § 8-6-2001 et seq.

Amendments. The 2019 amendment by No. 315 substituted “or rules” for “rules or regulations” in the introductory language of (4).

The 2019 amendment by No. 910 repealed (2) and (3); and substituted “Division of Environmental Quality” for “department” in (5)(D).

8-6-504. Illegal Dump Eradication and Corrective Action Program. [Repealed effective May 1, 2020.]

The Illegal Dump Eradication and Corrective Action Program shall be administered by the Division of Environmental Quality.

History. Acts 1997, No. 938, § 1; 2005, No. 1962, § 17; 2019, No. 910, § 2621.

Publisher’s Notes. This section is repealed by Acts 2019, No. 1067, § 5, effective May 1, 2020. For current law, see § 8-6-2001 et seq.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-6-505. Proceedings generally. [Repealed effective May 1, 2020.]

Publisher's Notes. This section is repealed by Acts 2019, No. 1067, § 5, effective May 1, 2020. For current law, see § 8-6-2001 et seq.

For text of section effective until May 1, 2020, see the bound volume.

8-6-506. Criminal, civil, and administrative penalties. [Repealed effective May 1, 2020.]

Publisher's Notes. This section is repealed by Acts 2019, No. 1067, § 5, effective May 1, 2020. For current law, see § 8-6-2001 et seq.

For text of section effective until May 1, 2020, see the bound volume.

8-6-507. Consequences of unpaid fines and costs. [Repealed effective May 1, 2020.]

Publisher's Notes. This section is repealed by Acts 2019, No. 1067, § 5, effective May 1, 2020. For current law, see § 8-6-2001 et seq.

For text of section effective until May 1, 2020, see the bound volume.

8-6-508. Enforcement generally. [Repealed effective May 1, 2020.]

Publisher's Notes. This section is repealed by Acts 2019, No. 1067, § 5, effective May 1, 2020. For current law, see § 8-6-2001 et seq.

For text of section effective until May 1, 2020, see the bound volume.

8-6-509. Agricultural operations. [Repealed effective May 1, 2020.]

Publisher's Notes. This section is repealed by Acts 2019, No. 1067, § 5, effective May 1, 2020. For current law, see § 8-6-2001 et seq.

For text of section effective until May 1, 2020, see the bound volume.

8-6-510. Effectiveness of regulations and orders. [Repealed effective May 1, 2020.]

None of the provisions of this act are intended to supersede any of the reuse, recycling, or fill provisions of state law of Regulation 22 of the Solid Waste Management Division of the Division of Environmental Quality.

History. Acts 1997, No. 1207, § 6; 1999, No. 1164, § 68; 2019, No. 910, § 2622.

Publisher's Notes. This section is repealed by Acts 2019, No. 1067, § 5, effective May 1, 2020. For current law, see § 8-6-2001 et seq.

Amendments. The 2019 amendment

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

SUBCHAPTER 6 — SOLID WASTE MANAGEMENT AND RECYCLING FUND ACT

SECTION.

- 8-6-602. Legislative findings and intent — Duties of division — Construction.
- 8-6-603. Definitions.
- 8-6-604. Recycling plans and implementation.
- 8-6-605. Solid Waste Management and Recycling Fund.
- 8-6-606. Landfill disposal fees.

SECTION.

- 8-6-607. Collection of fees.
- 8-6-608. Penalties.
- 8-6-610. Rules.
- 8-6-613. Computer and electronic equipment recycling program.
- 8-6-615. Distribution of funds to regional solid waste management districts — Reporting requirements.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-6-602. Legislative findings and intent — Duties of division — Construction.

(a) The General Assembly finds that the solid waste needs of the state are not being met in an efficient, cost-efficient, and environmentally sound manner. The current reliance upon localized landfills is threatening to add Arkansas to those states experiencing solid waste management crises.

(b) The General Assembly concludes that, to the extent practicable, regional solid waste management systems should be developed which address solid waste needs in the context of cooperation and shared resources.

(c)(1) The General Assembly finds that recycling glass, plastic, cans, paper, and other materials will reduce the state's reliance upon landfills.

(2) Additionally, other solid waste reduction activities will help reduce the state's dependence on landfills, including:

(A) Using waste items as raw materials in a production process, such as adding shingles to asphalt mix for paving;

(B) Using waste items to produce an end product without recycling, such as returning wood chips to citizens as mulch;

(C) Using waste items as fuel, such as burning wood chips or tire chips in a waste-to-fuel process; or

(D) Other activities as approved by the Division of Environmental Quality.

(3) The waste stream reduction activities described in subdivision (c)(2) of this section also curb littering, illegal dumping, and abate the environmental risks caused by current solid waste practices.

(4) The General Assembly therefore mandates that recycling shall be integrated as a component of any solid waste management plan required under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., and that these recycling plans shall be implemented under the terms of this subchapter.

(d) The division and the Arkansas Pollution Control and Ecology Commission shall promulgate and implement policies, rules, and procedures for administering the terms of this subchapter.

(e) The terms and obligations of this subchapter shall be liberally construed so as to achieve remedial intent.

History. Acts 1989, No. 849, § 2; 1989, No. 934, § 2; 2011, No. 819, § 1; 2013, No. 1333, § 1; 2019, No. 315, § 543; 2019, No. 910, §§ 2623, 2624.

Amendments. The 2019 amendment by No. 315 deleted “regulations” following “rules” in (d).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (c)(2)(D); and substituted “division” for “department” in (d).

8-6-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(2) [Repealed.]

(3) “Landfill” means all landfills permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., except those permitted landfills operated by a regulated public utility for ash generated by the combustion of coal to produce electric energy;

(4) “Permittee” means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, county, city, town, or municipal authority or trust, venture, or other legal entity holding a solid waste disposal permit as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;

(5) “Recycling” means the systematic collection, sorting, decontamination, and return of waste materials to commerce as commodities for use or exchange;

(6) “Solid waste” means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from indus-

trial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source material, special nuclear material, or by-product material as defined by the Atomic Energy Act of 1954, Pub. L. No. 83-703;

(7) “Solid waste disposal permit” means a permit issued by the State of Arkansas under the provisions of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., for the construction and operation of a landfill waste disposal facility;

(8) “Solid waste management” means the management of, but is not limited to, the storage, collection, transfer, transportation, treatment, utilization, processing, and final disposal of solid waste, including, but not limited to, the prevention, reduction, or recycling of wastes;

(9) “Solid waste management plan” means a plan which is developed according to the provisions of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., and guidelines of the Division of Environmental Quality, and which is subject to approval by the division;

(10) “Solid waste reduction activities” means other activities that divert materials from landfills for reuse, including without limitation:

(A) Using waste items as raw materials in a production process, such as adding shingles to asphalt mix for paving;

(B) Using waste items to produce an end product without recycling, such as returning wood chips to citizens as mulch;

(C) Using waste items as fuel, such as burning wood chips or tire chips in a waste-to-fuel process; or

(D) Other activities as approved by the division; and

(11) “Transporter” or “solid waste transporter” means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, county, city, town, or municipal authority or trust, venture, or other legal entity transporting solid waste within the state that is to be disposed of outside the state.

History. Acts 1989, No. 849, § 3; 1989, No. 934, § 3; 1991, No. 755, § 1; 1993, No. 1127, § 3; 1995, No. 511, § 1; 1999, No. 1164, § 69; 2011, No. 819, § 2; 2019, No. 910, §§ 2625-2627.

repealed (2); in (9), substituted “Division of Environmental Quality” for the first occurrence of “department” and “division” for the second occurrence of “department”; and substituted “division” for “department” in (10)(D).

Amendments. The 2019 amendment

8-6-604. Recycling plans and implementation.

(a) Unless otherwise excused by the Arkansas Pollution Control and Ecology Commission pursuant to the Arkansas Solid Waste Management Act, § 8-6-201 et seq., each governmental entity which is required to submit or has submitted a solid waste management plan pursuant to § 8-6-211 shall produce, by July 1, 1991, a solid waste management plan which proposes the establishment of recycling programs and

facilities. The plan shall be subject to review and approval by the Division of Environmental Quality.

(b) Pursuant to established procedures, the division may initiate enforcement actions against governmental entities for failure to abide by the requirements of subsection (a) of this section. Enforcement sanctions may include, but are not limited to, denial, discontinuation, or reimbursement of grant funds awarded pursuant to any programs administered by the division.

History. Acts 1989, No. 849, § 4; 1989, No. 934, § 4; 2019, No. 910, § 2628.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" twice in (b).

8-6-605. Solid Waste Management and Recycling Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Solid Waste Management and Recycling Fund".

(b) The fund shall be administered by the Division of Environmental Quality, which shall authorize distributions and administrative expenditures from the fund under this subchapter for solid waste management and recycling programs.

(c) In addition to all moneys appropriated by the General Assembly to the fund, there shall be deposited into the fund all landfill disposal fees collected pursuant to §§ 8-6-606 and 8-6-607, United States Government moneys designated to enter the fund, any moneys received by the state as a gift or donation to the fund, and all interest earned upon money deposited into the fund.

(d) No more than twenty percent (20%) of the moneys received annually into the fund shall be used by the division for:

(1) The administration of a solid waste management and recycling program;

(2) The administration of a computer and electronic equipment recycling program under § 8-6-613; and

(3) Solid waste management compliance and enforcement activities at landfills and open dumps.

History. Acts 1989, No. 849, § 5; 1989, No. 934, § 5; 2007, No. 512, § 1; 2013, No. 1333, § 2; 2017, No. 624, § 1; 2019, No. 910, §§ 2629, 2630.

Amendments. The 2019 amendment

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b); and substituted "division" for "department" in (d).

8-6-606. Landfill disposal fees.

(a)(1) Except as provided in subsection (c) or subsection (e) of this section, there is imposed on each landfill permittee a landfill disposal fee of twenty-five cents (25¢) for each uncompacted cubic yard of solid waste and forty-five cents (45¢) for each compacted cubic yard of solid waste received at the landfill.

(2) If a landfill permittee is required or chooses to operate on a weight basis, the landfill disposal fee shall be one dollar and fifty cents (\$1.50) for each one (1) ton (2,000 lbs.) of solid waste received at the landfill.

(b)(1) Except as provided in subsections (a) and (c) of this section, for all solid waste generated and transported within the state but to be disposed of outside the state, there is imposed on each such solid waste transporter a solid waste transportation fee of twenty-five cents (25¢) for each uncompacted cubic yard of solid waste and forty-five cents (45¢) for each compacted cubic yard of solid waste transported.

(2) If a solid waste transporter chooses to operate on a weight basis, the solid waste transportation fee shall be one dollar and fifty cents (\$1.50) for each ton of solid waste transported in the state.

(c)(1) For those permitted landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry, there is imposed on each landfill permittee a landfill disposal fee of ten cents (10¢) for each uncompacted cubic yard of solid waste and twenty cents (20¢) for each compacted cubic yard of solid waste received at the landfill.

(2) If the landfill permittee chooses to operate on a weight basis, the landfill disposal fee under this subsection shall be fifty cents (50¢) for each ton of solid waste received at the landfill.

(d)(1)(A) By January 1, 2004, all permitted facilities identified by rule of the Arkansas Pollution Control and Ecology Commission as Class 1 and Class 3C landfills, except those permitted landfills that shall comply with closure requirements before January 1, 2005, shall install scales and commence weighing all solid waste received at the landfill.

(B) This requirement may be satisfied by utilizing an alternative weighing system approved by the Director of the Division of Environmental Quality.

(2) Class 1 and Class 3C landfills shall be required to weigh all loads in excess of one (1) ton (2,000 lbs.), unless otherwise authorized in writing by the Division of Environmental Quality. This provision authorizes Class 1 and Class 3C landfills to estimate weights for residential and other similar loads weighing less than one (1) ton (2,000 lbs.).

(3) Class 1 and Class 3C landfills shall install and operate scales for the purpose of weighing solid waste received at the landfill and shall maintain and operate the scales in accordance with the United States Department of Agriculture standards.

(4) Except as provided in subdivisions (d)(1) and (2) of this section, beginning January 1, 2004:

(A) All quarterly reports required by this subchapter to be submitted by Class 1 and Class 3C landfill permittees to the division shall accurately state the total weight of solid waste received at the landfill, and the total weight of solid waste received at the landfill shall be based upon the recorded weight scale measurements; and

(B) The recorded weight scale measurements of solid waste received at Class 1 and Class 3C landfills shall be used to calculate the solid waste disposal fees payable to the division by Class 1 and Class 3C landfill permittees.

(e) Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission is exempt from the landfill disposal fee under this section.

History. Acts 1989, No. 849, § 6; 1989, No. 934, § 6; 1991, No. 754, § 1; 1993, No. 1127, § 3; 2001, No. 217, §§ 1, 2; 2003, No. 1337, § 1; 2009, No. 189, §§ 1, 2; 2019, No. 315, § 544; 2019, No. 910, §§ 2631-2633.

Amendments. The 2019 amendment

by No. 315 substituted “rule” for “regulation” in (d)(1)(A).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” throughout (d).

8-6-607. Collection of fees.

(a) On or before January 15, April 15, July 15, and October 15 of each year, each landfill permittee and each solid waste transporter shall:

(1) Submit to the Division of Environmental Quality a quarterly report that accurately states the total weight or volume of solid waste received at the landfill or transported out of state during the quarter just completed; and

(2) Pay to the division the full amount of disposal and transportation fees imposed and collected under this subchapter for the preceding quarter.

(b)(1) Except as provided in subdivisions (b)(2) and (3) of this section, the disposal and transportation fees collected under this section shall be special revenues and deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund for administrative support of the Compliance Advisory Panel.

(2) Twenty-five percent (25%) of the disposal fees collected under subsection (a) of this section from landfills in which a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the private industry shall be deposited quarterly into the Marketing Recyclables Program Fund.

(3) Except for the disposal fees deposited into the Marketing Recyclables Program Fund under subdivision (b)(2) of this section, before disbursing moneys to the regional solid waste management boards, the division shall deposit the following moneys into the following funds each fiscal year:

(A) One hundred fifty thousand dollars (\$150,000) into the Crime Information System Fund to be used exclusively for the scrap metal logbook program; and

(B) Three hundred thousand dollars (\$300,000) into the Arkansas Unpaved Roads Program Fund.

History. Acts 1989, No. 849, § 7; 1989, No. 934, § 7; 1991, No. 755, § 2; 1993, No. 1127, § 3; 1995, No. 511, § 2; 2012, No. 283, § 10; 2013, No. 1202, § 45; 2017, No. 1067, § 2; 2019, No. 695, § 1; 2019, No. 910, §§ 2634, 2635.

A.C.R.C. Notes. Acts 2019, No. 695, § 3, provided: “This act applies to annual disbursements under § 8-6-607 beginning in fiscal year 2020.”

Acts 2019, No. 910, § 2635, amended subdivision (4)(B) of this section to replace

“department” with “division”. However, Acts 2019, No. 695, § 1, specifically repealed this subdivision.

Amendments. The 2019 amendment by No. 695 rewrote the section.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (1); and substituted “division” for “department” in (2) and (4)(B).

8-6-608. Penalties.

Failure of the permittee or solid waste transporter to pay the fees assessed by the Division of Environmental Quality provides grounds for administrative or civil enforcement action. Sanctions may include civil penalties as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the revocation of the solid waste disposal or solid waste transporter permit.

History. Acts 1989, No. 849, § 8; 1989, No. 934, § 8; 1993, No. 1127, § 3; 2019, No. 910, § 2636.

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

Amendments. The 2019 amendment

8-6-610. Rules.

(a) The Arkansas Pollution Control and Ecology Commission may adopt reasonable rules necessary to implement this subchapter, including without limitation:

- (1) Collecting fees; and
- (2) Setting priorities for the administration of this subchapter.

(b) The rules shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

History. Acts 1989, No. 849, § 10; 1989, No. 934, § 10; 1991, No. 749, § 6; 1997, No. 179, § 4; 2001, No. 70, § 2; 2011, No. 819, § 5; 2013, No. 1333, § 4; 2019, No. 315, § 545.

Amendments. The 2019 amendment deleted “and regulations” in the section heading; and deleted “and regulations” following “rules” in the introductory language of (a), and in (b).

8-6-613. Computer and electronic equipment recycling program.

(a) A program for the recycling of computer and electronic equipment is created.

(b) The General Assembly finds that:

(1) Computer and electronic equipment solid waste are among the fastest growing and most toxic segments of Arkansas's solid waste stream; and

(2) There are recycling options to address this problem, and Arkansas solid waste districts and local governments and their delegated authorities and agents should develop solid waste management plans, programs, and facilities that integrate computer and electronic equipment recycling as a functional part of the solid waste management system.

(c) Each regional solid waste management board that is required to submit or has submitted a regional solid waste management plan under § 8-6-1904 or a solid waste management plan developed under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., and receives funding under this subchapter shall operate a solid waste management system that includes a computer and electronic equipment recycling program.

(d) The Arkansas Pollution Control and Ecology Commission may adopt rules necessary to implement an effective computer and electronic equipment recycling program.

History. Acts 2007, No. 512, § 2; 2017, No. 624, § 3; 2019, No. 315, § 546.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (d).

8-6-615. Distribution of funds to regional solid waste management districts — Reporting requirements.

(a)(1) Funds collected under this subchapter and deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund, less up to twenty percent (20%) for administrative support for the Division of Environmental Quality, shall be allocated annually to each of the approved regional solid waste management districts utilizing a combination of the two (2) methods stated in subsections (b) and (c) of this section.

(2) Fifty percent (50%) of the funds shall be determined using the method provided in subsection (b) of this section, and fifty percent (50%) shall be determined using the method provided in subsection (c) of this section.

(3) The total figures obtained from each method shall be combined to arrive at each regional solid waste management district's fund distribution.

(b)(1)(A) The division shall determine the amount of funds within each planning and development district organized under § 14-166-201 et seq., and recognized by the Governor, based on the same distribution as general revenue support is distributed to the planning and development districts in the current fiscal year.

(B) The division shall adjust the distribution described in subdivision (b)(1)(A) of this section within the planning and development districts to coincide with the boundaries of the regional solid waste

management districts by determining each county's share of the funds available within each planning and development district.

(C) Each county's share shall be based on the proportion that each county's population bears to the total population in the planning and development district to which the county is assigned, multiplied by the amount of funds determined to be available within the planning and development district.

(D) The county's proportional share as determined under this subdivision (b)(1) shall be added to all other counties' shares within the same regional solid waste management district.

(2) The formula to be used under this subsection is as follows:

(A) Divide fifty percent (50%) of the total remaining funds equally by the eight (8) regional planning and development districts;

(B) Multiply the quotient obtained under subdivision (b)(2)(A) of this section by the most recent federal decennial census population of each county; and

(C)(i) Divide the product obtained under subdivision (b)(2)(B) of this section by the planning and development district population in which the county is located to determine the portion per county.

(ii) Individual county portions are grouped and totaled by each new regional solid waste management district to determine each regional solid waste management district's allocation.

(c)(1) The remaining fifty percent (50%) of the funds shall be based on the ratio of the district's 2010 or current decennial census population divided by the most recent federal decennial census state population.

(2) The formula to be used under this subsection is as follows:

(A) Divide each solid waste management district's total population by the state's most recent federal decennial census population; and

(B) Multiply the quotient obtained under subdivision (c)(2)(A) of this section by the total remaining funds to determine each regional solid waste management district's allocation.

(d)(1) For each fiscal year, each regional solid waste management board that receives funds under this section shall provide a report by November 1 to the division that explains how the board spent the funding received under this section in the previous fiscal year.

(2) The report under this subsection shall include the following information concerning the amount of expenditures in the previous fiscal year from the funds received under this section for:

(A) Equipment and material purchases; and

(B) Operation costs.

(3) The report shall be in a spreadsheet form as prescribed by the division.

(4) The Arkansas Pollution Control and Ecology Commission may promulgate rules necessary for funding and program reporting, accountability, and oversight under this subsection.

History. Acts 2013, No. 1333, § 5; § 547; 2019, No. 693, § 15; 2019, No. 910, 2017, No. 624, §§ 4, 5; 2019, No. 315, §§ 2637-2640.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (d)(4).

The 2019 amendment by No. 693 substituted “For each fiscal year” for “After August 1, 2017, and for each subsequent fiscal year” in (d)(1).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1); and substituted “division” for “department” throughout the section.

SUBCHAPTER 7 — REGIONAL SOLID WASTE MANAGEMENT DISTRICTS AND BOARDS

SECTION.

- 8-6-701. Purpose — Legislative findings — Construction.
- 8-6-702. Definitions.
- 8-6-704. Boards — Powers and duties. [Effective until May 1, 2020.]
- 8-6-704. Boards — Powers and duties. [Effective May 1, 2020.]
- 8-6-705. Needs assessments.
- 8-6-706. Solid waste landfill and transfer station permits.
- 8-6-708. Procedures and rules.

SECTION.

- 8-6-712. Regulation of solid waste disposal.
- 8-6-714. Rents, fees, and charges.
- 8-6-716. Regional needs assessment.
- 8-6-718. Waste tire collection center.
- 8-6-720. Opportunity to recycle — Recyclable materials collection centers — Definition.
- 8-6-722. Penalties.
- 8-6-723. Alternative formation of original districts.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-6-701. Purpose — Legislative findings — Construction.

The purpose of this subchapter is to protect the public health and the state’s environmental quality by establishing regional solid waste management and planning. The current system, relying upon solid waste management by individual counties and municipalities, has fostered present conditions in which certain areas of the state are facing capacity shortages of crisis proportions, while others experience a surfeit of capacity with individual disposal facilities which cannot muster the resources for environmentally responsible operators. Given these disparate environmental and economic concerns, the General Assembly concludes that regional solid waste management and planning, under the oversight of the Division of Environmental Quality and

the Arkansas Pollution Control and Ecology Commission, is essential to address the imminent and future needs of the state. The terms and obligations of this subchapter shall be liberally construed so as to achieve remedial intent.

History. Acts 1989, No. 870, § 1; 1991, No. 752, § 2; 1999, No. 1164, § 70; 2019, No. 910, § 2641.

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

Amendments. The 2019 amendment

8-6-702. Definitions.

As used in this subchapter:

- (1) "Board" or "regional board" means a regional solid waste management board established pursuant to this subchapter;
- (2) "Commission" means the Arkansas Pollution Control and Ecology Commission;
- (3) [Repealed.]
- (4) [Repealed.]
- (5) "Disposal site" means any place at which solid waste is dumped, accepted, or disposed of for final disposition by landfilling, incinerating, composting, or any other method;
- (6) "District" means a regional solid waste management district;
- (7) "Interested party" means the Director of the Division of Environmental Quality or his or her designee, the board, the person making application to the board, or any person submitting written comments on an application within the public comment period;
- (8) "Landfill" means a permitted landfill under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;
- (9) "Materials in the recycling process" means ferrous and nonferrous metals diverted or removed from the solid waste stream so that they may be reused, as long as such materials are processed or handled using reasonably available processing equipment and control technology as determined by the director, taking cost into account, and a substantial amount of the materials are consistently utilized to manufacture a product which otherwise would have been produced using virgin material;
- (10) "Recyclable materials" or "recyclables" means those materials from the solid waste stream that can be recovered for reuse in present or reprocessed form;
- (11) "Recyclable materials collection center" or "collection center" means a facility which receives or stores recyclable materials prior to timely transportation to material recovery facilities, markets for recycling, or disposal;
- (12) "Recycling" means the systematic collection, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;
- (13) "Solid waste" means all putrescible and nonputrescible wastes in solid, semisolid, or liquid form, including, but not limited to, yard or

food waste, waste glass, waste metals, waste plastics, wastepaper, waste paperboard, and all other solid and semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities, but does not include materials in the recycling process as defined in this section;

(14) "Solid waste management system" means the same as provided in § 8-6-203;

(15) "Source separation" means the act or process of removing a particular type of recyclable material from the solid waste stream at the point of generation or at a point under control of the generator for the purpose of collection and recycling; and

(16) "Yard waste" means grass clippings, leaves, and shrubbery trimmings.

History. Acts 1989, No. 870, § 2; 1991, No. 752, § 2; 1993, No. 479, § 1; 1999, No. 1164, § 71; 2019, No. 910, §§ 2642, 2643.

Amendments. The 2019 amendment repealed (3) and (4); and substituted "Director of the Division of Environmental Quality" for "director" in (9).

Amendments. The 2019 amendment

8-6-704. Boards — Powers and duties. [Effective until May 1, 2020.]

(a) The regional solid waste management boards have the following powers and duties:

(1) To collect data, study, and initially evaluate the solid waste management needs of all localities within their regional solid waste management districts, as provided in § 8-6-716, and to publish their findings as a regional needs assessment;

(2) To evaluate on a continuous basis the solid waste needs of their districts and thereby update the regional needs assessments at least biennially;

(3) To formulate recommendations to all local governments within their districts on solid waste management issues and to formulate plans for providing adequate solid waste management;

(4) To issue or deny certificates of need to any applicant for a solid waste disposal facility permit within their districts with the exception of permits for landfills when a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character;

(5) To petition the Director of the Division of Environmental Quality to issue, continue in effect, revoke, modify, or deny any permit for any element of a solid waste management system located within a district based on compliance or noncompliance with the solid waste management plan of the district;

(6) To adopt rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as are reasonably necessary to assure public notice and participation in any findings or rulings of the regional solid waste management boards and to administer the duties of the regional solid waste management boards;

(7) To establish programs to encourage recycling;

- (8) To adopt official seals and alter them at pleasure;
- (9) To maintain offices at such places as they may determine;
- (10) To sue and be sued in their own names and to plead and be impleaded;

(11) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of a district, including, but not limited to, entering into contracts and agreements with private entities for provision of services;

(12) To carry out all other powers and duties conferred by this subchapter and § 8-6-801 et seq.;

(13)(A) To enter into agreements with another district to allow a district or any person within that district to transfer solid waste into another district.

(B) However, notice of all such authorizations shall be submitted to the Division of Environmental Quality within thirty (30) days and shall be incorporated into the regional needs assessment in its next regular update; and

(14)(A) To authorize a disposal facility within a district to accept the receipt of solid waste from an adjoining district upon request by the generator of that solid waste, provided that the request specifies the disposal facility and the nature and estimated annual volume of solid waste to be received.

(B) However, notice of all such authorizations shall be submitted to the division within thirty (30) days and shall be incorporated into the regional needs assessment in its next regular update.

(b)(1) The regional solid waste management boards may:

(A) Apply for such permits, licenses, certificates, or approvals as may be necessary to construct, maintain, and operate any portion of a solid waste management system and to obtain, hold, and use licenses, permits, certificates, or approvals in the same manner as any other person or operating unit of any other person;

(B) Employ such engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and other consultants and employees as may be required in the judgment of the district and fix and pay their compensation from funds available to the district therefor;

(C) Purchase all kinds of insurance, including, but not limited to, insurance against tort liability, business interruption, and risks of damage to property; and

(D) Employ an environmental officer who may:

- (i) Inspect all landfills;
- (ii) Inspect other solid waste facilities;
- (iii) Inspect waste haulers and other vehicles;
- (iv) Ensure compliance with all district regulations;
- (v) Collect evidence of noncompliance and present the evidence to the prosecuting attorney; or
- (vi) Issue citations for the violation of any district regulation.

(2)(A) If a regional solid waste management board employs an environmental officer under this subsection, then the environmental

officer may complete the training course for law enforcement officers at the Arkansas Law Enforcement Training Academy.

(B) After satisfactory completion of the training course, the environmental officer shall be a law enforcement officer.

(C) After satisfactory completion of the training course, the environmental officer may:

(i) Carry firearms;

(ii) Execute and serve a warrant or other processes issued under the authority of the district and related to violations of district regulations; and

(iii) Make arrests and issue citations for violations of district regulations regarding environmental protection.

(c) The regional solid waste management boards shall adopt and follow county purchasing procedures, as provided in § 14-22-101 et seq., as the approved purchasing procedures for the districts.

(d)(1) Each regional solid waste management board shall procure an annual financial audit of the district. Such audits shall be conducted following each board's fiscal year end. Regional solid waste management funds which are subject to audit in conjunction with a single audit performed consistent with Governmental Auditing and Reporting Standards are not required to have a separate audit.

(2)(A) Each district shall choose and employ accountants in good standing with the Arkansas State Board of Public Accountancy to conduct these audits in accordance with Governmental Auditing and Reporting Standards issued by the United States Comptroller of the Currency.

(B) The district shall pay for such audits from their administrative moneys.

(3) Each audit report and accompanying comments and recommendations shall be reviewed by the appropriate regional solid waste management board.

(4) Copies of each audit report of a district shall be filed with the division and with Arkansas Legislative Audit. In addition, one (1) copy of the audit report shall be kept for public inspection with the books and records of the district.

(5) Failure to provide a full and complete audit report, as required by this subchapter, shall prohibit future distribution of revenue from funding programs that are administered by the division unless otherwise authorized by the director.

(6)(A) Arkansas Legislative Audit shall annually select on a random basis one-third (1/3) of the total number of districts for a review of selected policies, procedures, and transactions.

(B) The review under subdivision (d)(6)(A) of this section shall include without limitation a determination of compliance with applicable criteria.

(C) A report of the reviews under subdivision (d)(6)(A) of this section shall be compiled and presented to:

(i) The Legislative Joint Auditing Committee; and

(ii) The division.

History. Acts 1989, No. 870, § 4; 1991, No. 752, § 2; 1993, No. 619, § 1; 1995, No. 163, § 1; 1997, No. 398, § 1; 1999, No. 341, § 1; 2005, No. 1289, § 1; 2007, No. 209, §§ 1, 2; 2009, No. 1199, § 8; 2019, No. 643, § 1; 2019, No. 910, §§ 2644-2647.

Publisher's Notes. For text of section effective May 1, 2020, see the following version.

Amendments. The 2019 amendment by No. 643 added (d)(6).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(5) and (a)(13)(B); and substituted "division" for "department" in (a)(14)(B), (d)(4), and (d)(5).

8-6-704. Boards — Powers and duties. [Effective May 1, 2020.]

(a) The regional solid waste management boards have the following powers and duties:

(1) To collect data, study, and initially evaluate the solid waste management needs of all localities within their regional solid waste management districts, as provided in § 8-6-716, and to publish their findings as a regional needs assessment;

(2) To evaluate on a continuous basis the solid waste needs of their districts and thereby update the regional needs assessments at least biennially;

(3) To formulate recommendations to all local governments within their districts on solid waste management issues and to formulate plans for providing adequate solid waste management;

(4) To issue or deny certificates of need to any applicant for a solid waste disposal facility permit within their districts with the exception of permits for landfills when a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character;

(5) To petition the Director of the Division of Environmental Quality to issue, continue in effect, revoke, modify, or deny any permit for any element of a solid waste management system located within a district based on compliance or noncompliance with the solid waste management plan of the district;

(6) To adopt rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as are reasonably necessary to assure public notice and participation in any findings or rulings of the regional solid waste management boards and to administer the duties of the regional solid waste management boards;

(7) To establish programs to encourage recycling;

(8) To adopt official seals and alter them at pleasure;

(9) To maintain offices at such places as they may determine;

(10) To sue and be sued in their own names and to plead and be impleaded;

(11) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of a district, including, but not limited to, entering into contracts and agreements with private entities for provision of services;

(12) To carry out all other powers and duties conferred by this subchapter and § 8-6-801 et seq.;

(13)(A) To enter into agreements with another district to allow a district or any person within that district to transfer solid waste into another district.

(B) However, notice of all such authorizations shall be submitted to the Division of Environmental Quality within thirty (30) days and shall be incorporated into the regional needs assessment in its next regular update; and

(14)(A) To authorize a disposal facility within a district to accept the receipt of solid waste from an adjoining district upon request by the generator of that solid waste, provided that the request specifies the disposal facility and the nature and estimated annual volume of solid waste to be received.

(B) However, notice of all such authorizations shall be submitted to the division within thirty (30) days and shall be incorporated into the regional needs assessment in its next regular update.

(b)(1) The regional solid waste management boards may:

(A) Apply for such permits, licenses, certificates, or approvals as may be necessary to construct, maintain, and operate any portion of a solid waste management system and to obtain, hold, and use licenses, permits, certificates, or approvals in the same manner as any other person or operating unit of any other person;

(B) Employ such engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and other consultants and employees as may be required in the judgment of the district and fix and pay their compensation from funds available to the district therefor;

(C) Purchase all kinds of insurance, including, but not limited to, insurance against tort liability, business interruption, and risks of damage to property; and

(D) Employ an environmental officer who may:

(i) Inspect all landfills;

(ii) Inspect other solid waste facilities;

(iii) Inspect waste haulers and other vehicles;

(iv) Ensure compliance with all district regulations;

(v) Collect evidence of noncompliance and present the evidence to the prosecuting attorney; or

(vi) Issue citations for the violation of any district regulation.

(2) [Repealed.]

(c) The regional solid waste management boards shall adopt and follow county purchasing procedures, as provided in § 14-22-101 et seq., as the approved purchasing procedures for the districts.

(d)(1) Each regional solid waste management board shall procure an annual financial audit of the district. Such audits shall be conducted following each board's fiscal year end. Regional solid waste management funds which are subject to audit in conjunction with a single audit performed consistent with Governmental Auditing and Reporting Standards are not required to have a separate audit.

(2)(A) Each district shall choose and employ accountants in good standing with the Arkansas State Board of Public Accountancy to conduct these audits in accordance with Governmental Auditing and Reporting Standards issued by the United States Comptroller of the Currency.

(B) The district shall pay for such audits from their administrative moneys.

(3) Each audit report and accompanying comments and recommendations shall be reviewed by the appropriate regional solid waste management board.

(4) Copies of each audit report of a district shall be filed with the division and with Arkansas Legislative Audit. In addition, one (1) copy of the audit report shall be kept for public inspection with the books and records of the district.

(5) Failure to provide a full and complete audit report, as required by this subchapter, shall prohibit future distribution of revenue from funding programs that are administered by the division unless otherwise authorized by the director.

(6)(A) Arkansas Legislative Audit shall annually select on a random basis one-third (1/3) of the total number of districts for a review of selected policies, procedures, and transactions.

(B) The review under subdivision (d)(6)(A) of this section shall include without limitation a determination of compliance with applicable criteria.

(C) A report of the reviews under subdivision (d)(6)(A) of this section shall be compiled and presented to:

- (i) The Legislative Joint Auditing Committee; and
- (ii) The division.

History. Acts 1989, No. 870, § 4; 1991, No. 752, § 2; 1993, No. 619, § 1; 1995, No. 163, § 1; 1997, No. 398, § 1; 1999, No. 341, § 1; 2005, No. 1289, § 1; 2007, No. 209, §§ 1, 2; 2009, No. 1199, § 8; 2019, No. 643, § 1; 2019, No. 910, §§ 2644-2647; 2019, No. 1067, § 6.

A.C.R.C. Notes. Acts 2019, No. 1067, § 11, provided: “(a) The purpose of this act is to have the Environmental Compliance Resource Program operational and to make illegal dump control officers unnecessary on or before May 1, 2020.

“(b) If legislation concerning the transformation of the Arkansas Department of Environmental Quality is enacted during this Regular Session of the General Assembly, the Arkansas Code Revisor and

the Arkansas Code Revision Commission shall correct the references to the Arkansas Department of Environmental Quality consistent with those laws”.

Publisher’s Notes. For text of section effective until May 1, 2020, see the preceding version.

Amendments. The 2019 amendment by No. 643 added (d)(6).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(5) and (a)(13)(B); and substituted “division” for “department” in (a)(14)(B), (d)(4), and (d)(5).

The 2019 amendment by No. 1067 repealed (b)(2).

8-6-705. Needs assessments.

(a) All needs assessments required by this subchapter are subject to review and approval for completeness by the Division of Environmental Quality.

(b) Failure to provide complete assessments as required by this subchapter may provide the division with grounds to initiate enforcement actions against the regional solid waste management boards or their component governmental entities. Pursuant to established administrative procedures, sanctions may be imposed, including, but not limited to, denial, discontinuation, or reimbursement of any grant funding administered by the division to a regional solid waste management district or any of its component governmental entities.

(c) The division may award grants to the districts for the development of the initial regional needs assessments, for the biennial updates, and for any other update required by the law.

History. Acts 1989, No. 870, § 7; 1991, No. 752, § 2; 1999, No. 1164, § 72; 2019, No. 910, § 2648.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" twice in (b) and in (c).

8-6-706. Solid waste landfill and transfer station permits.

(a)(1) Before an application for a permit is submitted to the Division of Environmental Quality, an applicant for a solid waste landfill permit or a transfer station permit shall obtain a certificate of need from the regional solid waste management board that has jurisdiction over the proposed site, with the exception of permits for landfills when a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(2) The division may deny any permit based upon the denial of a certificate of need by any regional solid waste management board.

(b)(1) Applicants for a solid waste landfill permit or transfer station permit must petition the regional board with jurisdiction over the proposed site for a certificate of need in accordance with procedures adopted by the board.

(2) The applicant's petition must establish, at a minimum, that the proposed disposal facility:

(A) Is consistent with the regional planning strategy adopted by the board in the regional needs assessment or the regional solid waste management plan;

(B) Does not conflict with existing comprehensive land use plans of any local governmental entities;

(C) Does not disturb an archaeological site as recognized by the Arkansas Archeological Survey or a rare and endangered species

habitat as recognized by the Arkansas State Game and Fish Commission or the United States Fish and Wildlife Service;

(D) Will not adversely affect the public use of any local, state, or federal facility, including, but not limited to, parks and wildlife management areas;

(E) Does not conflict with the requirements of state laws and rules or federal laws and regulations on the location of disposal facilities;

(F) If located in the hundred-year floodplain, does not restrict the flow of the hundred-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health or the environment; and

(G) If the transfer station proposes to transfer waste outside of the regional solid waste management district in which it is located, the petition shall also contain documentation that the district to which the waste will be transferred has been notified and that the board of that district has approved the receipt of the waste. This provision shall not apply if the waste is being transported for disposal outside the geographical limits of this state.

(c) Any interested party to a certificate of need determination by a board may appeal the decision to the Director of the Division of Environmental Quality pursuant to procedures adopted by the Arkansas Pollution Control and Ecology Commission. The director may issue a permit despite the denial of a certificate of need if the director finds upon appeal that the decision of the board was not supported by substantial evidence.

(d) After notice and a public hearing to be held by the board in the county where the proposed landfill or transfer station is to be located, a certificate of need shall be issued or denied by the board based upon an evaluation of:

(1) The information provided by the applicant in the petition for a certificate of need;

(2) The requirements and considerations of any needs assessments prepared pursuant to this section;

(3) The location of the applicant's proposed landfill or transfer station based on the district's needs and its highway and road system;

(4) For landfill permits, the board shall consider the need for the landfill based upon the district's excess projected capacity which is currently permitted for operation, but in no event shall the district's excess permitted projected capacity exceed thirty (30) years, unless the city or county government within whose jurisdiction the proposed landfill is located authorizes through adoption of a resolution approval of the excess capacity;

(5) Any solid waste management system plans promulgated and approved pursuant to §§ 8-6-211 and 8-6-212 to the extent these solid waste management system plans conform to an overall regional planning strategy;

(6) A detailed history of the applicant's record and that of the stockholders and officers with respect to violations of environmental

laws, rules, and regulations of the United States or any state or any political subdivision of any state; and

(7) Any procedures adopted by the board for issuance of a certificate of need.

(e) All landfill permit applications shall specify the service areas which the landfill will serve under the permit.

(f) All transfer station permit applications shall specify the service areas which the transfer station shall serve under the permit and shall also specify the facility to which waste from the transfer station will be transferred.

History. Acts 1989, No. 870, §§ 6, 8; 1991, No. 9, § 1; 1991, No. 752, § 2; 1999, No. 631, § 1; 1999, No. 1164, § 73; 2003, No. 672, § 1; 2007, No. 208, § 1; 2019, No. 315, §§ 548, 549; 2019, No. 910, §§ 2649, 2650.

Amendments. The 2019 amendment by No. 315 inserted “laws and rules” in (b)(2)(E); and inserted “rules” in (d)(6).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1) and (c); and substituted “division” for “department” in (a)(2).

8-6-708. Procedures and rules.

The Arkansas Pollution Control and Ecology Commission is authorized to prescribe procedures and rules:

(1) To guide the initial and continued organization and operation of the respective regional solid waste management boards in accordance with the purposes of this subchapter and § 8-6-801 et seq.;

(2) To assure public notice and participation prior to adoption of regional needs assessments, findings, or reports made by the boards;

(3) To defray some of the costs of the administration of this subchapter, including, but not limited to, inspections and technical review of submissions required by this subchapter by setting graduated surcharges upon any waste stream increase in excess of ten percent (10%) as a result of receipt of solid waste from outside the regional solid waste management district; and

(4) To require prompt compliance with the requirements of this subchapter and § 8-6-801 et seq.

History. Acts 1989, No. 870, § 10; 1991, No. 752, § 2; 2019, No. 315, § 550.

Amendments. The 2019 amendment

substituted “rules” for “regulations” in the section heading and the introductory language.

8-6-712. Regulation of solid waste disposal.

(a) A regional solid waste management district which has an approved solid waste management plan may:

(1)(A) Require, by rule or other legal means, that solid waste generated or collected within the boundaries of the district be delivered to a particular project for disposal, treatment, or other handling.

(B) Provided, however, that nothing in this section shall be construed as impairing legal and proper contracts existing on March 26, 1991, under the Arkansas Constitution, or the notes or other evidences of indebtedness incurred pursuant to a revenue bond issued or reissued dependent upon a project involving a stated waste stream which is a contractual condition of said indebtedness;

(2) Prohibit, by rule or other legal means, the collection of solid waste within the boundaries of the district by persons not properly licensed by the district;

(3)(A) Authorize that a city, county, or any person in an adjoining district may deliver solid waste to a designated landfill within the district for disposal, treatment, or other handling.

(B) Provided, however, that notice of all such authorizations shall be submitted to the Division of Environmental Quality within thirty (30) days and shall be incorporated into the district needs assessment in its next regular update;

(4) Provide, by rule or other legal means, that no person, other than as may be designated by the district, shall engage in the collection or utilization of solid waste within the district which would be competitive with the purposes or activities of the district; and

(5) Covenant in connection with the issuance of bonds, notes, or other evidence of indebtedness to adopt any rule described in subdivisions (a)(1), (a)(2), and (a)(4) of this section and that any rule so adopted shall remain in full force and effect and shall be enforced so long as any bonds, notes, or other evidences of indebtedness remain outstanding.

(b) The districts shall issue rules or regulations which are consistent with and in accordance with but no more restrictive than all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

(c)(1) Nothing in this section shall prohibit the disposal of solid waste generated by a private industry in a permitted landfill where the private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character.

(2) Nothing in this section shall prohibit the collection or disposal of solid waste by a municipality with an existing permitted landfill with a twenty-five-year capacity as of January 1, 1991, when the city bears the expense of operating and maintaining the landfill and the landfill complies with United States Environmental Protection Agency and division regulations.

(3) Nothing in this section shall prohibit a municipality or county from constructing or operating a facility or project to process and market recyclable materials for use as fuel.

(d) Furthermore, nothing in this subchapter shall prohibit the disposal of dead animal carcasses through means which are otherwise permitted by state law or rule.

History. Acts 1991, No. 752, § 2; 1993, No. 619, § 2; 1999, No. 1164, § 74; 2019, No. 315, §§ 551-554; 2019, No. 910, §§ 2651, 2652.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” throughout (a) and in (d).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(3)(B); and substituted “division” for “department” in (c)(2).

8-6-714. Rents, fees, and charges.

(a)(1)(A) A regional solid waste management board may fix, charge, and collect rents, fees, and charges of no more than two dollars (\$2.00) per ton of solid waste related to the movement or disposal of solid waste within the regional solid waste management district, including without limitation fees and charges:

(i) Related to the district’s direct involvement with the district’s disposal or treatment; or

(ii) That support the district’s management of the solid waste needs of the district.

(B) The board may fix, charge, and collect fees or charges under subdivision (a)(1)(A)(ii) of this section only if the board:

(i) Employs or otherwise makes available from another agency an enforcement officer to:

(a) Enforce all local ordinances, statutes, rules, and regulations for which the district has been previously given enforcement authority regarding solid waste, including the Environmental Compliance Resource Act, § 8-6-2001 et seq.; and

(b) Seek to prevent and to identify and eliminate illegal dump sites;

(ii) Has a program for household hazardous waste collection and disposal; and

(iii) Has a program for recycling that includes rural areas of the district and the recycling of bulky waste.

(2) The board may fix, charge, and collect fees or charges for solid waste generated:

(A) Within or without the district delivered to a landfill or transfer station within the district, regardless of whether the disposal facilities are owned or operated by the district; or

(B) Within the district but delivered to a location outside the district.

(3) The board may fix, charge, and collect penalties from entities that fail to timely remit rents, fees, and charges under this section.

(4) Solid waste generated within one (1) district and delivered to another district for disposal may be assessed a fee as follows:

(A) Either the district in which the solid waste was generated or a district in which the same solid waste is transported, stored, managed, or disposed may assess the fee;

(B) The fee may be assessed against the generator, transporter, or disposal facility; and

(C) Each ton or cubic yard of waste may be assessed only one (1) fee.

(b) The fees created in this section do not apply to:

(1)(A) Solid waste generated by private industry if the private industry bears the expense of operating and maintaining the disposal facility for the solid waste; or

(B) Nonmunicipal solid waste generated by private industry and shipped to another state for recycling, treatment, or disposal;

(2) Solid waste recycled, used, or generated by steel mills or related facilities classified within Subsector 331 of the 2007 North American Industrial Classification System, as it existed on January 1, 2011;

(3) Recyclable materials that are transported, processed, or marketed for recycling;

(4) Organic materials that are delivered to a permitted composting facility;

(5) Materials that are removed from solid waste and processed for recycling;

(6) Waste tires processed through a district's waste tire program; or

(7) Household hazardous waste collected through a district's household hazardous waste program.

(c)(1) The fee created in subsection (a) of this section shall not exceed two dollars (\$2.00) per ton of solid waste.

(2) However, if weight tickets are not available, the fee shall be calculated on a volume basis at twenty-five cents (25¢) per uncompacted cubic yard or forty-five cents (45¢) per compacted cubic yard.

(3)(A) Districts shall determine by interlocal agreement how the districts shall:

(i) Assess and administer the fee; and

(ii) Divide the fees.

(B) If districts cannot reach an interlocal agreement regarding the division of the fees, then the fees shall be divided equally between the districts.

(d) The board may levy a service fee on each residence or business for which the board makes solid waste collection or disposal services available.

(e)(1)(A) The board may, by majority vote, require fees or delinquent fees to be collected with the real and personal property taxes of any county within the district.

(B) If the board elects to collect such fees in this manner, it shall so notify the county collector, who shall enter such fees on tax notices to be collected with the real and personal property taxes of the county.

(C) No county collector shall accept payment of any property taxes where the taxpayer has been billed for solid waste collection services unless the service fee is also receipted.

(2) If a property owner fails to pay the service fee, it shall become a lien on the property.

History. Acts 1991, No. 752, § 2; 2011, No. 209, § 2; 2019, No. 315, § 555; 2019, No. 1067, § 7.

A.C.R.C. Notes. Acts 2019, No. 1067, § 11, provided: “(a) The purpose of this act is to have the Environmental Compliance Resource Program operational and to make illegal dump control officers unnecessary on or before May 1, 2020.

“(b) If legislation concerning the transformation of the Arkansas Department of Environmental Quality is enacted during this Regular Session of the General Assembly, the Arkansas Code Revisor and the Arkansas Code Revision Commission shall correct the references to the Arkan-

sas Department of Environmental Quality consistent with those laws”.

Publisher’s Notes. Acts 2019, No. 1067, § 7 specifically amended subdivision (a)(1)(B)(i)(a) of this section as amended by Acts 2019, No. 315.

Amendments. The 2019 amendment by No. 315 inserted “rules” in (a)(1)(B)(i)(a).

The 2019 amendment by No. 1067 substituted “Environmental Compliance Resource Act, § 8-6-2001 et seq.” for “Illegal Dump Eradication and Corrective Action Program Act, § 8-6-501 et seq.” in (a)(1)(B)(i)(a).

8-6-716. Regional needs assessment.

(a)(1)(A)(i) Each regional solid waste management board created pursuant to this subchapter shall prepare a regional needs assessment evaluating the solid waste management needs within its regional solid waste management district. Provided, however, that such regional needs assessments need not include an evaluation of the need for landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character.

(ii) Such regional needs assessment shall be submitted for Division of Environmental Quality review, and the Director of the Division of Environmental Quality shall approve or disapprove it within ninety (90) days after submission.

(B)(i) The regional needs assessments for boards created pursuant to § 8-6-703 shall be due every four (4) years.

(ii) The division may, at its discretion, stagger the due dates by random selection so that approximately one-fourth ($\frac{1}{4}$) of the districts will submit a regional needs assessment each year.

(C)(i) The division will notify in writing the districts of the date on which their regional needs assessments are due.

(ii) The board may obtain an extension of that deadline from the director.

(D) A board created pursuant to § 8-6-703 in a region having a projected solid waste disposal capacity of less than five (5) years or in a region having no landfill for solid waste disposal shall prepare and submit a regional needs assessment annually, with the first regional needs assessment due on June 30, 1995, and with updated regional needs assessments due on June 30 of each year thereafter.

(E) Any board which submitted the biennial regional needs assessment due on January 31, 1995, under prior law, shall prepare and submit its next regional needs assessment on June 30, 1996, with updated regional needs assessments due on June 30 of each year thereafter.

(2) The regional needs assessment shall include, at the minimum, the following:

(A) An evaluation of the amount of solid waste generated within the district and the amount of remaining disposal capacity, expressed in years, at the solid waste disposal facilities within the district that are permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;

(B) An evaluation of the solid waste collection, transportation, and disposal needs of all localities within the district; and

(C) An evaluation and balancing of the environmental, economic, and other relevant factors which would be implicated by acceptance of solid waste from beyond the boundaries of the district.

(b) Each board shall update its regional needs assessment, at the minimum, every four (4) years.

(c) At a time not later than five (5) years before the disposal capacity in a region reaches its projected capacity, the board shall develop a request for proposals to increase the district's projected capacity for solid waste disposal within the district in accordance with its regional needs assessment.

(d) No landfill shall receive solid waste from beyond the district boundaries when projected solid waste disposal capacity within the district is less than five (5) years, except as may be otherwise specified pursuant to this subchapter.

(e) No owner or operator of a landfill serving a limited area of a district shall be required to increase the landfill's service area to accommodate the needs of the district.

History. Acts 1991, No. 752, § 2; 1993, No. 619, § 3; 1995, No. 1030, § 1; 1999, No. 428, § 2; 2019, No. 910, §§ 2653-2655.

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" twice in (a)(1)(A)(ii); and substituted "division" for "department" in (a)(1)(B)(ii) and (a)(1)(C)(i).

Amendments. The 2019 amendment

8-6-718. Waste tire collection center.

Beginning July 1, 1993, each regional solid waste management board shall establish a waste tire collection center at which residents of the regional solid waste management district may dispose of their waste motor vehicle tires at no cost except as provided by rule of the Arkansas Pollution Control and Ecology Commission or the board.

History. Acts 1991, No. 752, § 2; 2019, No. 315, § 556.

Amendments. The 2019 amendment substituted "rule" for "regulation".

8-6-720. Opportunity to recycle — Recyclable materials collection centers — Definition.

(a)(1) Each regional solid waste management board shall ensure that its residents have an opportunity to recycle.

(2) At least one (1) recyclable materials collection center shall be available in each county of a regional solid waste management district unless the Arkansas Pollution Control and Ecology Commission grants the district an exemption. An exemption may be granted if a county is adequately served by a recyclable materials collection center in another county.

(3) Boards shall assess the operation of existing and proposed recycling centers and materials recovery facilities to determine the adequacy of the existing and proposed recycling centers and materials recovery facilities for the collection and recovery of recyclable materials. Boards shall give due consideration to existing recycling facilities in ensuring the opportunity to recycle and are encouraged to use, to the extent practicable, persons engaged in the business of recycling on March 26, 1991, whether or not the persons were operating for profit.

(4) As used in this subsection, "opportunity to recycle" means availability of curbside pickup or collection centers for recyclable materials at sites that are convenient for persons to use.

(b) The Division of Environmental Quality shall determine by rule the adequacy of the facilities and the number and type of recyclable materials for which the services in this section must be provided.

(c) Each board shall provide information on how, when, and where materials may be recycled, including a promotional program that encourages source separation of residential, commercial, industrial, and institutional materials.

(d) Each board should ensure, alone or in conjunction with other boards, that materials separated for recycling are taken to markets for sale or to materials recovery facilities.

(e)(1) A board shall not prevent a person generating or collecting recyclable materials from delivering the recyclable materials to a recycling facility of the generator's or collector's choice.

(2) However, no person shall divert to personal use or commercial purpose any recyclable materials placed in a container as a part of a regional recycling program without the consent of the generator or the collector.

(3) Any person who pleads guilty or nolo contendere to or is found guilty of unlawfully diverting recyclable materials under a regional recycling program shall be guilty of a Class C misdemeanor.

(f) Each board shall incorporate into its solid waste management plan its proposal for fulfilling the obligations of this section.

(g) Nothing in this section shall be construed to prohibit the planning or implementation of any regional recycling program prior to compliance with the requirements of subsection (f) of this section.

History. Acts 1991, No. 752, § 2; 2001, No. 1720, § 4; 2019, No. 315, § 557; 2019, No. 693, § 16; 2019, No. 910, § 2656.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (b).

The 2019 amendment by No. 693, in (a)(1), deleted "Beginning July 1, 1992" from the beginning and deleted the second sentence; deleted "Beginning July 1, 1993" from the beginning of (a)(2); substituted "the existing and proposed recycling

centers and materials recovery” for “these” in (a)(3); and added (a)(4).

The 2019 amendment by No. 910 substituted “Division of Environmental Qual-

ity” for “Arkansas Department of Environmental Quality” in (b).

8-6-722. Penalties.

Any person who violates this subchapter or any rule of the Arkansas Pollution Control and Ecology Commission or of a regional solid waste management board shall be deemed guilty of a misdemeanor. Upon conviction, the person shall be subject to imprisonment for not more than thirty (30) days or a fine of not more than one thousand dollars (\$1,000), or both imprisonment and fine.

History. Acts 1991, No. 752, § 2; 2019, No. 315, § 558.

Amendments. The 2019 amendment substituted “rule” for “regulation”.

8-6-723. Alternative formation of original districts.

(a)(1) In lieu of forming a regional solid waste management district under any other provision of this subchapter, a district may be created by interlocal agreement of the local governments in any county with a population of at least ninety thousand (90,000) persons and in which there is a permitted landfill on January 1, 1991. The regional solid waste management board of the district shall be established by interlocal agreement.

(2) The creation of the district shall be effective upon the Director of the Division of Environmental Quality’s receipt of written notice in the form of a joint resolution by the local governments.

(b)(1) [Repealed.]

(2) The creation of a district shall be effective upon the governing body of the authority notifying the director in writing. The governing body of a district created under this subsection shall be determined by the authority creating the district. The provisions of § 8-6-703 or any other section of this subchapter which provides for the method of selection of the governing body of a district shall not apply to districts formed under this subsection.

(c) The Arkansas Pollution Control and Ecology Commission shall have no authority to add to or otherwise change the boundaries of a district created under this section.

History. Acts 1991, No. 752, § 2; 2019, No. 910, §§ 2657, 2658.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in (a)(2); and repealed (b)(1).

SUBCHAPTER 8 — BONDS BY REGIONAL SOLID WASTE MANAGEMENT DISTRICTS

SECTION.

8-6-804. Bonds — Issuance, execution, and sale.

8-6-804. Bonds — Issuance, execution, and sale.

(a) Regional solid waste management boards are authorized to use any available funds and revenues for the accomplishment of projects and may issue bonds, as authorized by this subchapter, for the purpose of paying project costs and accomplishing projects, either alone or together with other available funds and revenues.

(b)(1) The issuance of bonds shall be by resolution of the board.

(2) The bonds may be coupon bonds payable to bearer, subject to registration as to principal or as to principal and interest, or fully registered bonds without coupons, may contain exchange privileges, may be issued in one (1) or more series, may bear such date or dates, may mature at such time or times, not exceeding forty (40) years from their respective dates, may bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption in advance of maturity at such prices, and may contain such terms, covenants, and conditions as the resolution may provide, including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the investing and reinvesting of any moneys during periods not needed for authorized purposes, the nature and extent of the security, the rights, duties, and obligations of the regional solid waste management district and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(c) There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this subchapter, with each successive issue to be authorized as provided by this subchapter. Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the project involved may be controlled by the resolution authorizing the issuance of the bonds.

(d) Subject to the provisions of this subchapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

(e) The bonds may be sold at public or private sale for such price, including, without limitation, sale at a discount, and in such manner as the board may determine by resolution.

(f) Bonds issued under this subchapter shall be executed by the manual or facsimile signatures of the chair and secretary of the board,

but one (1) of such signatures must be manual. The coupons attached to the bonds may be executed by the facsimile signature of the chair of the board. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes. The seal of the board shall be placed or printed on each bond in such manner as the board shall determine.

(g)(1)(A) Prior to the issuance of any bonds pursuant to this subchapter, the district may seek the advice of the Arkansas Development Finance Authority as to the financial feasibility of the project to be financed, and, if so, shall provide the authority with such information and documentation as it may reasonably request in order to render that advice.

(B) In the event the district seeks the advice of the authority, the authority shall be entitled to reasonable compensation for its services as determined by the district and the authority.

(2) The district may request the authority to designate it as a developer, as contemplated by § 15-5-403, and hence, to guarantee the bonds on such terms and conditions as may be mutually agreed upon by the district and the authority, consistent with the program delineated in the Arkansas Development Finance Authority Bond Guaranty Act of 1985, § 15-5-401 et seq.

(3) The district may also request that the authority be the issuer of the bonds and loan the proceeds thereof to the district, secured by a pledge of revenues from the project on such terms as may be necessary to permit the sale of the bonds, consistent with the provisions hereof applicable to the issuance of bonds directly by districts.

(h) Boards are specifically authorized to apply for and receive loans from the Arkansas Natural Resources Commission to finance projects from the proceeds of the commission's bonds issued pursuant to the Arkansas Waste Disposal and Pollution Abatement Facilities Financing Act of 1987, § 15-22-701 et seq., on terms mutually acceptable to the borrowing board and the commission, including, but not limited to, provisions for a pledge of revenues to secure such loans, as set forth in § 8-6-803. The commission is authorized but not required to require, as a prerequisite to approving any such loan, that the borrowing board comply with some or all of the requirements of subsections (a) and (f) of this section and subdivisions (b)(1) and (g)(1) of this section. The commission is further authorized to enter into agreements with the authority for such services to the commission or to the borrowing boards as the commission deems necessary or desirable in furtherance of the commission's powers and duties under the Arkansas Waste Disposal and Pollution Abatement Facilities Financing Act of 1987, § 15-22-701 et seq., the authority granted hereby being in addition to those powers and not in derogation or restriction thereof.

(i)(1) Before the issuance of a bond under this subchapter, the district shall obtain approval by the quorum court to issue the bond.

(2) If the regional solid waste management district is comprised of multiple counties, approval shall be obtained from the quorum court of each county.

History. Acts 1991, No. 752, § 4; 1995, No. 439, § 1; 2019, No. 891, § 1.

Amendments. The 2019 amendment added (i).

SUBCHAPTER 9 — LICENSING OF OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES

SECTION.	SECTION.
8-6-901. Definitions.	8-6-905. Powers and duties.
8-6-902. Penalties — Procedures.	8-6-906. Classification of licenses.
8-6-903. Licenses required.	8-6-907. Licensing.
8-6-904. Licensing committee — Members — Compensation — Restrictions.	8-6-908. Licensing — Eligibility — Reciprocity.
	8-6-909. Fees.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-6-901. Definitions.

As used in this subchapter:

- (1) “Commission” means the Arkansas Pollution Control and Ecology Commission;
- (2) [Repealed.]
- (3) [Repealed.]
- (4) [Repealed.]
- (5) “License” means a certificate of competency issued by the Director of the Division of Environmental Quality to solid waste management facility operators who have met the requirements of the licensing program;
- (6) “Licensing committee” means the committee of solid waste management facility managers, operators, or technicians established in this subchapter to assist and advise the commission and the division in the examining and licensing of operators of solid waste management facilities;

(7)(A) "Operator" means any person who performs operation of a solid waste management facility requiring individual judgment which may directly affect the proper operation of the solid waste management facility.

(B) "Operator" does not include an official solely exercising general administrative supervision;

(8) "Operator-in-training" means an employee of a solid waste management facility who has been issued an apprenticeship license by the director;

(9) "Provisional certificate" means a document issued to an operator by the director allowing an individual to operate at a facility while working to fulfill the licensing requirements;

(10)(A) "Recovered materials" means:

(i) Metal;

(ii) Paper;

(iii) Glass;

(iv) Plastic;

(v) Textiles;

(vi) Yard trimmings not destined for composting; or

(vii) Rubber materials which are not waste tires or waste tire residuals,

that have known recycling potential, can be feasibly recycled, and have been diverted and source-separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other but do not include materials destined for any use that constitutes disposal.

(B) "Recovered materials" are not solid waste;

(11) "Sanitary landfill" means any place for which a permit for disposal of solid waste on land is required under the provisions of this chapter;

(12)(A) "Solid waste disposal facility" means any place at which solid waste is dumped, abandoned, accepted, or disposed of for final disposition by incineration, landfiling, composting, or other method.

(B) Wastewater treatment plants permitted under the National Pollutant Discharge Elimination System and units at hazardous waste management facilities permitted under the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the Arkansas Hazardous Waste Management Code shall not be deemed to be disposal sites or facilities for the purpose of this subchapter; and

(13)(A) "Solid waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for storage, collection, transportation, processing, treatment, or disposal of solid waste.

(B)(i) For purposes of this subchapter, facilities engaged solely in the recycling of source-separated materials are excluded.

(ii) Also excluded are processes, operations, and facilities that are regulated pursuant to hazardous waste rules and regulations which are not regulated pursuant to solid waste rules and regulations.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1207, § 3; 1997, No. 1254, § 1; 1999, No. 1164, § 75; 2005, No. 728, § 1; 2009, No. 1199, § 9; 2019, No. 910, §§ 2659-2662; 2019, No. 1067, §§ 8, 9.

A.C.R.C. Notes. Acts 2019, No. 1067, § 11, provided: “(a) The purpose of this act is to have the Environmental Compliance Resource Program operational and to make illegal dump control officers unnecessary on or before May 1, 2020.

“(b) If legislation concerning the transformation of the Arkansas Department of Environmental Quality is enacted during this Regular Session of the General Assembly, the Arkansas Code Revisor and the Arkansas Code Revision Commission shall correct the references to the Arkan-

sas Department of Environmental Quality consistent with those laws”.

Acts 2019, No. 910, § 2660, amended former subdivision (4) of this section to replace “department” with “Division of Environmental Quality”. However, Acts 2019, No. 1067, § 8, specifically repealed this subdivision.

Amendments. The 2019 amendment by No. 910 repealed (2) and (3); substituted “Division of Environmental Quality” for “department” in (4); substituted “Director of the Division of Environmental Quality” for “director” in (5); and substituted “division” for “department” in (6).

The 2019 amendment by No. 1067 repealed (4); and deleted “and illegal dumps control officers” following “operators” in (5).

8-6-902. Penalties — Procedures.

(a) Any person who violates any provision of this subchapter or of any rule or order issued pursuant thereto, shall be subject to the same penalty and enforcement provisions as are contained in the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(b) Except as otherwise provided in this subchapter, the procedure of the Arkansas Pollution Control and Ecology Commission for issuance of rules, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-230 of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., including, without limitation, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

(c) All rules adopted under this subchapter shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 179, § 5; 2019, No. 315, § 559.

Amendments. The 2019 amendment

deleted “regulation” following “rule” in (a); and deleted “and regulations” following “rules” in (b) and (c).

8-6-903. Licenses required.

(a) It shall be illegal for any county, municipality, governmental subdivision, public or private corporation, or other person to operate a solid waste management facility unless the competency of the operator is duly licensed by the Director of the Division of Environmental Quality under the provisions of this subchapter.

(b) It shall further be illegal for any person to perform the duties of an operator of any such solid waste management facility without being duly licensed under this subchapter.

(c)(1) With the advice and assistance of the licensing committee, the director may grant a written waiver from the requirements of this subchapter.

(2) The director may withdraw a written waiver under subdivision (c)(1) of this section for just cause by written notice to the county, municipality, governmental subdivision, public or private corporation, or other person to whom the written waiver was granted.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 2015, No. 937, § 1; 2019, No. 910, § 2663. substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a).

Amendments. The 2019 amendment

8-6-904. Licensing committee — Members — Compensation — Restrictions.

(a)(1) There is created a licensing committee to advise and assist the Arkansas Pollution Control and Ecology Commission and the Division of Environmental Quality in the administration of the licensing program.

(2) The committee shall be composed of ten (10) voting members as follows:

(A) Three (3) members, to be appointed by the commission, shall be solid waste management facility operators licensed by the division;

(B) One (1) member, to be appointed by the commission, shall be an employee of a county operating a solid waste management facility who holds the position of solid waste management facility on-site operator or supervisor;

(C) One (1) member, to be appointed by the commission, shall be an employee of a municipality operating a sanitary landfill who holds the position of landfill on-site operator or supervisor;

(D) One (1) member, to be appointed by the commission, shall be a representative of one (1) of the duly constituted regional solid waste management boards;

(E) One (1) member, to be appointed by the commission, shall be an on-site operator or supervisor of a waste tire processing facility;

(F) One (1) member, to be appointed by the commission, shall be an on-site operator or supervisor of a nonsegregated materials recovery, transfer, or composting facility;

(G) One (1) member, to be appointed by the commission, shall be a faculty member of or other qualified person associated with an accredited college, university, or professional school in this state whose major field is related to environmental education; and

(H) One (1) member, to be appointed by the Director of the Division of Environmental Quality, shall be a qualified member of his or her staff who shall serve ex officio with no vote as executive secretary of the committee.

(b)(1) In the event of a vacancy, a new member shall be appointed by the commission to serve out the unexpired term.

(2)(A) As of August 12, 2006, no nonstate agency member shall serve more than two (2) consecutive three-year terms.

(B) Those members serving unexpired five-year terms may serve an additional one (1) consecutive three-year term.

(c) The committee shall select a member to serve as chair each year and shall meet as necessary to carry out its duties under this subchapter and at the call of the chair.

(d) State agency members of the committee shall receive no additional salary or per diem for their services as members of the committee, but they shall be allowed their travel and maintenance expenses while attending meetings away from Little Rock.

(e) No member of the committee shall participate in any licensing decision involving the firm or organization by which that member is employed or in which that member has a direct or indirect financial interest.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 250, § 47; 1997, No. 1254, § 2; 1999, No. 1508, § 7(c); 2005, No. 728, § 2; 2019, No. 910, §§ 2664-2666.

Amendments. The 2019 amendment

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(1) and (a)(2)(H); and substituted "division" for "department" in (a)(2)(A).

8-6-905. Powers and duties.

(a) The Arkansas Pollution Control and Ecology Commission, with the advice and assistance of the licensing committee, is given and charged with the power and duty to adopt rules implementing and effectuating such powers and duties of the Division of Environmental Quality and the committee under this subchapter as may be necessary for the administration and enforcement of this subchapter.

(b) The division is charged with the responsibility of administering and enforcing this subchapter, with the advice and assistance of the committee, and is given and charged with the following powers and duties:

(1)(A) To conduct examinations for licensing, which shall be held at least annually and more frequently as the commission shall deem necessary.

(B) This duty may be delegated by the division to the administrator of any approved course;

(2) To issue licenses to qualified solid waste management facility operators, to renew those licenses, to suspend or revoke the licenses for cause after due notice and opportunity for hearing, to issue one-year apprenticeship licenses to operators-in-training, and to issue provisional certificates; and

(3) To initiate enforcement actions or institute court proceedings, or both, to compel compliance with the provisions of this subchapter and rules issued under this subchapter.

(c) The committee shall:

(1) Conduct inquiries and establish findings necessary to advise the commission and the division on irregularities encountered in the management of the licensing program;

(2) Conduct inquiries and establish facts necessary to advise the commission and the division on the actions of licensees; and

(3) Recommend administrative sanctions, including, but not limited to, the suspension and revocation of licenses as necessary to promote the professional integrity of solid waste licensees.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1207, § 4; 1997, No. 1254, § 3; 2005, No. 728, § 3; 2019, No. 315, §§ 560, 561; 2019, No. 910, §§ 2667-2670; 2019, No. 1067, § 10.

A.C.R.C. Notes. Acts 2019, No. 1067, § 11, provided: "(a) The purpose of this act is to have the Environmental Compliance Resource Program operational and to make illegal dump control officers unnecessary on or before May 1, 2020.

"(b) If legislation concerning the transformation of the Arkansas Department of Environmental Quality is enacted during this Regular Session of the General Assembly, the Arkansas Code Revisor and

the Arkansas Code Revision Commission shall correct the references to the Arkansas Department of Environmental Quality consistent with those laws".

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a) and (b)(3).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" throughout (b) and (c).

The 2019 amendment by No. 1067 deleted "and qualified illegal dumps control officers" following "operators" in (b)(2).

8-6-906. Classification of licenses.

(a) The Arkansas Pollution Control and Ecology Commission shall classify solid waste management facility operator licenses, taking into account the type and complexity of the solid waste management facility, the character and volume of waste managed, the skill, knowledge, and experience reasonably required to successfully operate the solid waste management facility, and such other factors as the commission shall deem appropriate.

(b) The Director of the Division of Environmental Quality, with the advice and assistance of the licensing committee, shall license persons according to their qualifications to successfully operate solid waste management facilities within the classifications established and effectuated by rules promulgated by the commission.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 2019, No. 315, § 562; 2019, No. 910, § 2671.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b).

8-6-907. Licensing.

All operators in responsible charge of public and private solid waste management facilities shall be duly licensed and certified as competent by the Director of the Division of Environmental Quality under the provisions of this subchapter and under such rules as the Arkansas Pollution Control and Ecology Commission may adopt, with the advice and assistance of the licensing committee, pursuant to the authority of this subchapter.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 2019, No. 315, § 563; 2019, No. 910, § 2672.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules”.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-6-908. Licensing — Eligibility — Reciprocity.

(a)(1) The Director of the Division of Environmental Quality shall license and certify all applicants for licenses under this subchapter who satisfy the requirements of this subchapter and the rules issued pursuant thereto.

(2) Licenses shall be granted according to the classifications of operator licenses established in the rules promulgated by the Arkansas Pollution Control and Ecology Commission.

(3) Licenses shall be valid for a period of one (1) year and, with the exception of the apprenticeship license, shall be renewable upon application if the applicant meets the renewal requirements established by commission rule. Provisional certificates shall be for a period of one (1) year, but may be extended if the director determines there is sufficient justification.

(b) All operators of solid waste management facilities within the state shall apply to the Division of Environmental Quality for a license.

(c) The director may, at his or her discretion, waive the requirements or any part of the requirements for formal examination of an applicant for a license if the applicant holds a valid license or certificate from another state in which the requirements for a license in the appropriate classification are at least equal to the requirements set forth in this subchapter and the rules issued pursuant thereto.

(d) The director shall issue an apprenticeship license to operators-in-training as established under this subchapter and in rules promulgated by the commission.

(e) The director may issue, at his or her discretion, a provisional certificate to any operator for just cause as established under this subchapter and in rules promulgated by the commission.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1254, § 4; 2019, No. 315, §§ 564, 565; 2019, No. 910, §§ 2673, 2674.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules in (a)(1) and (a)(2), (c), (d), and (e); and substituted “rule” for “regu-

lation” in (a)(3).
The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1) and (b).

8-6-909. Fees.

- (a) The Arkansas Pollution Control and Ecology Commission shall have the authority to set fees in an amount to cover the cost of the administration of this subchapter. These fees to be assessed per classification of certification shall not exceed fifty dollars (\$50.00) for the initial cost of examination and license, fifty dollars (\$50.00) for the cost of reciprocity review and license, twenty-five dollars (\$25.00) for annual license renewal, twenty-five dollars (\$25.00) for provisional certificates, and a ten-dollar penalty for late renewal.
- (b) All of the fees shall be deposited into the Division of Environmental Quality Fee Trust Fund, as established in § 8-1-105.

History. Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1254, § 5; 1999, No. 1164, § 76; 2019, No. 910, § 2675.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (b).

SUBCHAPTER 10 — LANDFILL POST-CLOSURE TRUST FUND

SECTION.	SECTION.
8-6-1001. Definitions.	8-6-1004. Collection of fees.
8-6-1002. Creation.	8-6-1005. Penalties.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodedified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-6-1001. Definitions.

- As used in this subchapter, unless the context otherwise requires:
- (1) “Commission” means the Arkansas Pollution Control and Ecology Commission;
- (2) [Repealed.]
- (3) [Repealed.]
- (4) “Landfill” means a landfill permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., except a landfill where a

private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character;

(5) "Permittee" means any person holding a solid waste disposal permit as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;

(6) "Post-closure corrective action" means any measures deemed necessary by the Director of the Division of Environmental Quality to prevent or abate contamination of the environment from any landfill which has been certified as properly closed by the Division of Environmental Quality;

(7) "Solid waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342 or source material, special nuclear material, or by-product material as defined by the Atomic Energy Act of 1954, Pub. L. No. 83-703;

(8) "Solid waste disposal permit" means a permit issued by the State of Arkansas under the provisions of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., for the construction and operation of a landfill waste disposal facility; and

(9) "Transporter" or "solid waste transporter" means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, county, city, town, or municipal authority or trust, venture, or other legal entity transporting solid waste within the state that is to be disposed of outside of the state.

History. Acts 1991, No. 747, § 1; 1993, No. 1127, § 2; 1995, No. 511, § 3; 1999, No. 1164, § 77; 2019, No. 910, §§ 2676, 2677.

Amendments. The 2019 amendment repealed (2) and (3); and, in (6), substi-

tuted "Director of the Division of Environmental Quality" for "director" and "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

8-6-1002. Creation.

(a)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Landfill Post-Closure Trust Fund".

(2) In addition to all moneys appropriated by the General Assembly to the fund, there shall be deposited into the fund all landfill disposal fees collected pursuant to this subchapter and any moneys received by the state as a gift or donation to the fund or any federal moneys designated to enter the fund and all interest earned upon moneys deposited into the fund.

(3) Moneys received into the fund may also be used by the Division of Environmental Quality for administrative purposes at a level not to exceed three hundred thousand dollars (\$300,000) annually with an annual escalator not to exceed three percent (3%).

(b)(1) The fund shall be administered by the division, which shall authorize funding and administrative expenditures from the fund according to the provisions of this subchapter.

(2)(A) The fund shall be administered by the division and shall be used by the division for landfill post-closure corrective action.

(B) The fund shall be used only if the Director of the Division of Environmental Quality determines that:

(i) A landfill which is no longer receiving waste, regardless of when it ceased operating, is causing groundwater contamination or is causing other contamination that is a hazard to public health or endangers the environment; and

(ii) The owner or operator of the landfill site has expended at least ten thousand dollars (\$10,000) toward corrective action, unless the owner or operator cannot be located or the director determines an emergency exists necessitating immediate corrective action.

(3) The fund shall be administered by the division and may be used by the division to complete all activities necessary for the closure of a permitted waste tire processing or disposal site that is owned or operated by a regional solid waste management district if the division determines that the district lacks sufficient funds to complete closure of the permitted waste tire processing or disposal site.

(c) The fund shall not be used to compensate third parties for damages to property caused by the contamination.

(d) For the purposes of this subchapter only, closed areas or operational phases contiguous to any permitted landfill which is receiving solid waste when the director determines that corrective action is necessary are not eligible for funding as contemplated by this subchapter.

(e)(1) An owner or operator of a permitted landfill shall establish and at all times maintain financial assurance for the post-closure maintenance of the landfill. At a minimum, each owner or operator shall provide no less than twenty percent (20%) of estimated post-closure maintenance costs through a financial mechanism readily negotiable by the division to cash funds, for example, a letter of credit, surety bond, irrevocable trust, insurance, or other mechanism approved by the division, upon default by the owner and operator of post-closure obligations.

(2) If, after proper closure of a landfill, the division reasonably determines that the owner or operator cannot be located or cannot otherwise satisfy, in whole or part, post-closure maintenance obligations, the division is authorized to expend the necessary funds from the fund to satisfy the requirements of state and federal law and to prevent or abate releases to the environment.

(3) If the division is required to expend funds from the fund due to the failure of an owner or operator to meet the requirements of this subsection, the division shall pursue collection and recovery of the funds by issuing an administrative order notifying the owner or operator by certified mail at the last known address of the owner or operator of the action taken by the division and the amount of funds expended from the fund and that the administrative order may be appealed in accordance with the division's rules.

History. Acts 1991, No. 747, § 1; 1993, No. 1127, § 2; 1995, No. 511, § 4; 1997, No. 938, §§ 2, 3; 1999, No. 1210, § 2; 2005, No. 1962, § 18; 2015, No. 1037, § 1; 2017, No. 624, § 7; 2019, No. 315, § 566; 2019, No. 910, §§ 2678-2680.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (e)(3).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(3) and the introductory language of (b)(2)(B); and substituted "division" for "department" throughout the section.

8-6-1004. Collection of fees.

Fees imposed pursuant to the provisions of this subchapter shall be collected as follows:

(1) Each landfill permittee and each solid waste transporter shall submit to the Division of Environmental Quality on or before January 15, April 15, July 15, and October 15 of each year a quarterly report which accurately states the total weight or volume of solid waste received at the landfill or transported out of state during the previous quarter;

(2) On or before January 15, April 15, July 15, and October 15 of each year, each landfill permittee and solid waste transporter shall pay to the division the full amount of such disposal fees due for the previous quarter; and

(3) The disposal and transportation fees collected pursuant to this section shall be special revenues and shall be deposited into the State Treasury to the credit of the Landfill Post-Closure Trust Fund.

History. Acts 1991, No. 747, § 1; 1993, No. 1127, § 2; 1995, No. 511, § 5; 2019, No. 910, § 2681.

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (1); and substituted "division" for "department" in (2).

Amendments. The 2019 amendment

8-6-1005. Penalties.

Failure of the permittee or solid waste transporter to pay the fees assessed by the Division of Environmental Quality shall provide grounds for administrative or civil enforcement action. Sanctions may include civil penalties as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the revocation of the solid waste disposal or solid waste transporter permit.

History. Acts 1991, No. 747, § 1; 1993, No. 1127, § 2; 2019, No. 910, § 2682. substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.
Amendments. The 2019 amendment

SUBCHAPTER 11 — LANDFILL SERVICE AREAS

SECTION.	SECTION.
8-6-1103. Definitions.	8-6-1105. Expansion outside district —
8-6-1104. Transportation of solid waste outside district.	Exemption.

<p>Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and</p>	<p>classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.</p>
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8-6-1103. Definitions.

As used in this subchapter:

- (1) “Board” means a regional solid waste management board established pursuant to § 8-6-701 et seq., or a successor board to the powers of the board;
- (2) “Commission” means the Arkansas Pollution Control and Ecology Commission;
- (3) [Repealed.]
- (4) “District” means a regional solid waste management district as established by § 8-6-701 et seq., or a successor district of a regional solid waste management district;
- (5) “Landfill” means a permitted landfill under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.; and
- (6) “Solid waste” means the same as provided by § 8-6-702.

History. Acts 1991, No. 319, § 3; 1999, No. 1164, § 78; 2019, No. 910, § 2683.	Amendments. The 2019 amendment repealed (3).
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8-6-1104. Transportation of solid waste outside district.

In any instance in which a landfill has a useful life of less than one and one-half (1½) years, the Director of the Division of Environmental Quality may authorize any city utilizing that landfill to transport solid waste outside the boundaries of the regional solid waste management district. Provided, however, in no instance shall that authority be

extended after a landfill with a useful life in excess of one and one-half (1½) years becomes available within the district for accepting the solid waste of the city.

History. Acts 1991, No. 319, § 5; 1999, No. 1164, § 79; 2019, No. 910, § 2684. substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-6-1105. Expansion outside district — Exemption.

(a) This section shall apply until the later of:

(1) July 1, 1992; or

(2) Until the capacity of landfills in both the regional solid waste management district and the state reach a ten-year capacity.

(b) Landfill capacity shall be determined by the Director of the Division of Environmental Quality.

(c)(1) No existing landfill shall expand its service area outside the district in which it is located, except that existing landfills that on March 1, 1989, do not serve areas outside their respective districts shall not accept more than fifty (50) tons per day of solid waste originating from outside their districts.

(2) Existing landfills that on March 1, 1989, serve areas outside of their respective districts shall not increase the total amount of solid waste originating from outside their districts by more than twenty percent (20%) annually of the total volume of solid waste received at the facility from outside their districts. The amount of solid waste shall be determined by weight.

(3) No new landfill shall be allowed to receive solid waste outside the boundaries of the district in which it is located unless it is a landfill where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or of wastes of a similar kind or character and such industry has commenced, prior to March 1, 1991, the process for obtaining a permit by issuing notice to the local government having jurisdiction, as required under the rules of the Arkansas Department of Environmental Quality or the Division of Environmental Quality.

(4)(A) No new applications for landfill permits seeking to dispose of solid waste originating outside of a district or that propose to dispose of solid waste originating from outside such district shall be accepted or processed by the Division of Environmental Quality or a regional solid waste management board, unless such applications were pending before the Arkansas Department of Environmental Quality or the Division of Environmental Quality, on March 1, 1989.

(B) Provided, the prohibition contained in this subsection shall not apply to new applications for landfill permits if the landfill is one where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry, or of wastes of a similar kind or character, and such industry has commenced, prior to March 1, 1991, the process for

obtaining a permit by issuing notice to the local government having jurisdiction, as required under the rules of the Arkansas Department of Environmental Quality or the Division of Environmental Quality.

(d) The director may grant an exemption from this section for solid waste brought into a district for the purpose of recycling or because the district where solid waste is generated does not have a landfill that meets applicable state rules or federal regulations. The exemption shall be subject to such terms and conditions as the director may deem appropriate.

(e) A successor district may transport solid waste to any one (1) of the original districts of which the members of the successor district were a part.

History. Acts 1991, No. 319, § 4; 1993, No. 619, § 4; 1999, No. 1164, § 80; 2019, No. 315, §§ 567-569; 2019, No. 910, §§ 2685-2687.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (c)(3) and (c)(4)(B); and inserted “rules” in (d).

The 2019 amendment by No. 910 substituted “Division of Environmental Qual-

ity” for “Arkansas Department of Environmental Quality” in (b); added “or the Division of Environmental Quality” in (c)(3); substituted “Division of Environmental Quality” for “Arkansas Pollution Control and Ecology Commission” in (c)(4)(A); and substituted “Arkansas Department of Environmental Quality or the Division of Environmental Quality” for “department” in (c)(4)(A) and (c)(4)(B).

SUBCHAPTER 12 — DISPOSAL OF INCINERATOR ASH AND PETROLEUM-CONTAMINATED SOILS

SECTION.

8-6-1201. Legislative intent.

8-6-1204. Powers and duties.

8-6-1205. Adoption of disposal criteria —
Petroleum-contaminated
soils.

SECTION.

8-6-1206. Adoption of disposal criteria —
Incinerator ash.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-6-1201. Legislative intent.

The purpose of this subchapter is to protect the public health and the state’s environmental quality by establishing standards and promulgating rules by the Arkansas Pollution Control and Ecology Commission for the disposal of potentially harmful materials, specifically incinerator ash and petroleum-contaminated soils in a permitted landfill.

History. Acts 1991, No. 1183, § 1; **Amendments.** The 2019 amendment substituted “rules” for “regulations”.
2019, No. 315, § 570.

8-6-1204. Powers and duties.

The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

- (1) To adopt rules to meet the purposes of this subchapter;
- (2) To adopt specific design and operational criteria for the operation of a monofill;
- (3) To adopt criteria for the disposal of petroleum-contaminated soils in landfills; and
- (4) To administer and enforce all laws and rules relating to this subchapter.

History. Acts 1991, No. 1183, § 3; deleted “and regulations” following “rules”
2019, No. 315, §§ 571, 572. in (1) and (4).

Amendments. The 2019 amendment

8-6-1205. Adoption of disposal criteria — Petroleum-contaminated soils.

(a)(1) Within eighteen (18) months after the date of enactment of this subchapter, the Arkansas Pollution Control and Ecology Commission shall, after consultation with the Advisory Committee on Petroleum Storage Tanks, adopt criteria for the disposal of petroleum-contaminated soils in landfills that are permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(2) In adopting such criteria, the commission shall follow the procedures applicable to the adoption of rules under § 8-4-202(a).

(b) The criteria adopted by the commission shall:

- (1) Define the characteristics of the petroleum-contaminated soils that can be disposed of in permitted landfills;
- (2) Define the characteristics of landfills suitable for receipt of petroleum-contaminated soils;
- (3) Assure, to the extent practicable, that reasonable landfill capacity is available for disposal of petroleum-contaminated soils;
- (4) Consider the financial impact of such criteria on small businesses which need to dispose of petroleum-contaminated soils;
- (5) Consider whether affordable alternatives are available for the treatment or disposal of petroleum-contaminated soils; and
- (6) Be protective of public health and the environment.

(c) The criteria adopted by the commission shall include a description of appropriate methods for collecting samples and conducting analyses of petroleum-contaminated soils that may be disposed of in permitted landfills to assure the representativeness of the soil mass.

History. Acts 1991, No. 1183, § 5; deleted “and regulations” following “rules” 2019, No. 315, § 573. in (a)(2).

Amendments. The 2019 amendment

8-6-1206. Adoption of disposal criteria — Incinerator ash.

(a)(1) On or before July 1, 1992, the Arkansas Pollution Control and Ecology Commission shall adopt criteria for the disposal of incinerator ash in landfills that are permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(2) In adopting such criteria, the commission shall follow the procedures applicable to the adoption of rules under § 8-4-202(a).

(b) The criteria adopted by the commission shall include, but not be limited to, the monofilling of incinerator ash.

(c)(1) The monofill requirement created under this subchapter does not apply if the owner or operator demonstrates to the Division of Environmental Quality that the incinerator ash to be disposed of in the Class 1 landfill is received from incinerators that only combust yard waste or other natural vegetative debris, including vegetative storm debris, tree trimmings, and land-clearing debris.

(2) All other requirements adopted under this subchapter apply to the disposal of incinerator ash described in this subsection.

(3) As used in this subsection, “other natural vegetative debris” does not include any solid waste that can be classified as industrial, commercial, or construction and demolition waste.

History. Acts 1991, No. 1183, § 6; 1992 (1st Ex. Sess.), No. 48, § 2; 2011, No. 342, § 1; 2019, No. 315, § 574; 2019, No. 910, § 2688. The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (c)(1).

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (a)(2).

SUBCHAPTER 13 — COMMERCIAL MEDICAL WASTE INCINERATION FACILITIES

SECTION.

8-6-1301. Legislative findings and purpose.

8-6-1302. Definitions.

8-6-1304. Applicability.

8-6-1305. Permits — Procedure generally — Definition.

SECTION.

8-6-1306. Permits — Limitations.

8-6-1307. Financial assurance guarantees.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-6-1301. Legislative findings and purpose.

(a) The General Assembly has found that there is an increased interest in obtaining permits from the Arkansas Department of Environmental Quality or the Division of Environmental Quality for the purpose of constructing and operating commercial medical waste incineration facilities. The Clean Air Act in 42 U.S.C. § 7429(a)(1)(C) has directed the United States Environmental Protection Agency to promulgate regulations concerning these commercial medical waste incineration facilities. The General Assembly has determined that it is necessary to delay the issuance of permits to these commercial medical waste incineration facilities until those regulations are promulgated in order to ensure that any permits issued will be based on the latest available information concerning technology and safety as set forth in the federal regulations.

(b) As scientific understanding of the potential public health and environmental impacts from large-scale medical waste incineration evolves, the General Assembly finds that continued caution regarding the development of commercial medical waste incineration facilities is necessary in order to protect the public health, safety, and welfare. Even though medical waste incinerators constitute major sources of potentially harmful emissions into the air, the United States Environmental Protection Agency has yet to promulgate technology standards necessary to assure safe operation. In the meantime, highly speculative ventures seek to profit from the regulatory uncertainty by promoting undercapitalized incineration facilities handling volumes of waste far in excess of that from the largest hospital.

(c) This subchapter seeks to protect the public welfare by assuring that:

(1) Commercial-scale medical waste incinerators beginning operation after March 1, 1995, will be in compliance with the most recent operating standards and rules;

(2) The owner or operator of any commercial-scale medical waste incinerator beginning operation after March 1, 1995, shall demonstrate financial assurances necessary to ensure the proper operation, maintenance, and closure of such facilities;

(3) A transfer of ownership or control of any commercial-scale medical waste incinerator will prompt regulatory officials to apply permitting standards and procedures as stringent as those applicable for the issuance of a new permit;

(4) Generators of medical waste are encouraged to follow the hierarchy of waste management goals set out in the Arkansas Pollution Prevention Act, § 8-10-201 et seq.; and

(5) Both generators of medical waste and regulatory officials will give proper consideration to alternative technologies for treating medical waste other than incineration.

History. Acts 1992 (1st Ex. Sess.), No. 75, § 1; 1995, No. 496, § 1; 1999, No. 1164, § 81; 2019, No. 315, § 575; 2019, No. 910, § 2689.

by No. 315 substituted “rules” for “regulations” in (c)(1).

The 2019 amendment by No. 910 inserted “or the Division of Environmental Quality” in (a).

Amendments. The 2019 amendment

8-6-1302. Definitions.

As used in this subchapter:

(1) “Commercial medical waste incineration facility” means any facility accepting medical waste materials for treatment and disposal by incineration from an off-site source and operating the treatment and disposal facility as a business for profit;

(2) [Repealed.]

(3) [Repealed.]

(4) “Occupied structure” means a building or other structure:

(A) Where any person lives or carries on a business or other calling;

(B) Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation;

(C) Which is customarily used for overnight accommodation of persons whether or not a person is actually present. Each unit of a structure divided into separate units designed for occupancy is itself an occupied structure; or

(D) Which has not yet been constructed or completed but for which a building permit, where applicable, has been issued and is valid on the date the application for the permit to construct and operate a commercial medical waste incineration facility is filed; and

(5) “Person” means any individual or legal entity.

History. Acts 1992 (1st Ex. Sess.), No. 75, § 2; 1993, No. 491, § 1; 1993, No. 861, § 1; 1995, No. 496, § 7; 1999, No. 1164, § 82; 2019, No. 910, § 2690.

Amendments. The 2019 amendment repealed (2) and (3).

8-6-1304. Applicability.

(a) This subchapter shall not apply to medical waste incineration facilities constructed and operating before March 20, 1992, or to

medical waste incineration facilities operated by healthcare facilities for the purpose of disposing of medical waste.

(b) This subchapter shall not apply to permits for renovations to medical waste incineration facilities constructed and operating before March 20, 1992, either through modification or additional construction, provided that such renovations are for the purpose of:

- (1) Complying with the rules or regulations or standards imposed by local, state, or United States Government agencies; or
- (2) Adding additional waste disposal capacity to a medical waste incineration facility constructed and operating before March 20, 1992.

(c)(1) The requirements of this subchapter shall apply to any commercial medical waste incineration facility that has not initiated operation prior to March 1, 1995.

(2) For the purposes of construing this subsection and the application of this subchapter, initiation of operations has not occurred until the Division of Environmental Quality has approved the installation of all permitted pollution control equipment and the commercial medical waste incineration facility is receiving medical waste for incineration.

History. Acts 1992 (1st Ex. Sess.), No. 75, § 7; 1995, No. 496, §§ 2, 3; 2019, No. 315, § 576; 2019, No. 910, § 2691.

Amendments. The 2019 amendment by No. 315 inserted “rules or” in (b)(1). The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (c)(2).

8-6-1305. Permits — Procedure generally — Definition.

(a) The Division of Environmental Quality shall not accept any applications or issue any permits for the construction or operation of any commercial medical waste incineration facilities until the federal regulations promulgated pursuant to 42 U.S.C. § 7429(a)(1)(C) become effective or the United States Environmental Protection Agency’s dioxin reassessment is finalized, whichever is later.

(b) Any person applying for a permit or a permit modification to construct and operate a commercial medical waste incineration facility shall complete the following criteria at least thirty (30) days prior to submitting a permit application to the division:

- (1) Written notification by certified mail to each property owner and resident of any property adjacent to the proposed site of the intent to apply for a permit or permit modification; and
- (2) Publication of a public notice in the largest newspaper published in each county where the property which is the subject matter of the proposed commercial medical waste incineration facility permit or permit modification is located, and in at least one (1) newspaper of statewide circulation, of the intent to apply for a permit or a permit modification to construct and operate a commercial medical waste incineration facility.

(c) The division shall provide written notice by certified mail of the proposed permit or permit modification to the mayor of the city and the

county judge of the county where the property which is the subject matter of the permit application is located.

(d) The division shall conduct a public hearing in the county in which the commercial medical waste incineration facility is to be located prior to the issuance of a final permit.

(e)(1)(A) Notwithstanding the general provisions of other laws, permits for the construction or operation of commercial medical waste incineration facilities shall not be transferable upon a change in ownership or control of a commercial medical waste incineration facility.

(B) Prior to any change in ownership or control of a commercial medical waste incineration facility, the proposed new owner must apply for a new permit and abide by the requirements of § 8-1-106.

(C) The division shall process the application as one for a new permit and apply the most current statutes, rules, regulations, technological standards, and operational controls as conditions precedent for granting a permit or operational authority.

(2)(A) Any agreement or contract, written or oral, for a future transfer of operational control or ownership of a permitted commercial medical waste incineration facility or such an agreement or contract contingent upon the division's approval shall be subject to immediate disclosure to the division pursuant to § 8-1-106.

(B) Upon such disclosure, the division shall cause the intent to transfer ownership or control to be publicly noticed and produce the disclosure documentation required by § 8-1-106 for public inspection.

(C) After a reasonable period for public review, the division shall issue a written determination as to whether the intended transfer of ownership or control should be approved, subject to the right of appeal provided by § 8-1-106(e).

(D) During the pendency of the division's and the public's review of the disclosure materials required by this section, any actions taken by the permittee or proposed transferee are at their own risk, and shall not be construed by the division or the Arkansas Pollution Control and Ecology Commission as accruing equities in their favor.

(3) As used in this subsection:

(A) "Control" shall be presumed to reside with the owner, as defined herein, unless circumstances indicate that a person or entity other than an employee or agent of the owner is exercising ultimate decision-making authority regarding the construction or operation of a commercial medical waste incineration facility; and

(B) "Corporate ownership" shall be defined as a controlling or majority interest in a commercial medical waste incineration facility, either through outright ownership of stock or other indicia of title, or any equitable right to such title as construed from the totality of the circumstances.

(4) Any violation of this subsection shall constitute grounds for permit revocation and imposition of the civil and criminal penalties authorized by § 8-4-103.

(f)(1) If the original permit was issued more than one (1) year prior to the initiation of incineration activities at a commercial medical waste incineration facility, the division may review the conditions of the permit to determine whether good cause exists for modifying operating parameters to assure the maximum feasible control efficiency of emissions.

(2) Any modifications proposed by the division must be supported by appropriate references to the scientific and engineering literature or documented studies conducted by the division.

History. Acts 1992 (1st Ex. Sess.), No. 75, §§ 3, 4; 1995, No. 496, §§ 4, 5; 2019, No. 315, § 577; 2019, No. 910, § 2692.

Amendments. The 2019 amendment by No. 315 inserted “rules” in (e)(1)(C).

The 2019 amendment by No. 910 substituted “Division of Environmental Qual-

ity” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” throughout the section.

8-6-1306. Permits — Limitations.

(a) No permits may be issued by the Division of Environmental Quality for the construction or operation of a commercial medical waste incineration facility in which any of the following factors are present:

(1) The location of the commercial medical waste incineration facility is within one (1) mile of any occupied structure;

(2) The location of the commercial medical waste incineration facility is within an active fault zone or an area of high earthquake potential;

(3) The location of the commercial medical waste incineration facility is within a regulatory floodway, as adopted by communities participating in the National Flood Insurance Program managed by the Federal Emergency Management Administration Commission; or

(4) The location of the commercial medical waste incineration facility is within wetland areas.

(b) Exceptions may be made to these requirements only by obtaining written permission from all real property owners and residents of any property adjacent to the site of the proposed commercial medical waste incineration facility.

History. Acts 1992 (1st Ex. Sess.), No. 75, § 5; 2019, No. 910, § 2693.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a).

8-6-1307. Financial assurance guarantees.

(a)(1) Prior to initiating operations at a commercial medical waste incineration facility, the owner or operator must demonstrate:

(A) Evidence of liability insurance in such amount as the Division of Environmental Quality may determine to be necessary for the protection of public health and safety and protection of the environment; and

(B) Evidence of financial responsibility in such form and amount as the division may determine to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of the commercial medical waste incineration facility, all appropriate measures can be taken to prevent present and future damage to the public health and safety and to the environment.

(2) In determining the adequacy of the evidence submitted, the division may consider credible evidence indicating that the permittee is undercapitalized, insolvent, or otherwise financially incapable of assuring environmentally sound operations at the permitted commercial medical waste incineration facility.

(b) In determining the nature of financial assurance guarantees required by subsection (a) of this section, the division and the permittee shall follow, to the extent applicable, the federal regulations governing financial assurance of facilities governed by Subtitle D of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6941 et seq.

History. Acts 1995, No. 496, § 6; 2019, No. 910, § 2694.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in (a)(1)(A); and substituted “division” for “department” throughout the section.

SUBCHAPTER 14 — RESIDENTIAL USE OF LANDFILLS

SECTION.

8-6-1401. Purpose.

8-6-1402. Powers and duties.

SECTION.

8-6-1403. Rules.

8-6-1404. Land use.

8-6-1401. Purpose.

The purpose of this subchapter is to protect the public health and safety by requiring the Arkansas Pollution Control and Ecology Commission to establish standards and promulgate rules regarding the post-closure use of solid waste landfills and adjacent areas for residential purposes.

History. Acts 1993, No. 718, § 1; 2019, No. 315, § 578.

Amendments. The 2019 amendment substituted “rules” for “regulations”.

8-6-1402. Powers and duties.

The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

- (1) To adopt rules to meet the purposes of this subchapter;
- (2) To adopt specific design criteria on the post-closure of solid waste landfills to limit the types and kinds of uses of closed landfills to protect the safety of the environment and limit the possible exposure of the public to any harm; and
- (3) To administer and enforce all laws and rules relating to this subchapter.

History. Acts 1993, No. 718, § 3; 2019, No. 315, §§ 579, 580. deleted “and regulations” following “rules” in (1) and (3).

Amendments. The 2019 amendment

8-6-1403. Rules.

The Arkansas Pollution Control and Ecology Commission shall adopt rules for specific criteria:

(1) To limit any person, partnership, company, corporation, or other entity from building, erecting, or constructing any house or building for residential purposes upon any land used as or which has been used as a solid waste landfill; and

(2) To identify those houses and other buildings located on any land used as or which has been used as a solid waste landfill and are currently being used for residential purposes and to limit their future use for residential purposes.

History. Acts 1993, No. 718, § 3; 2019, No. 315, § 581. tory language, deleted “Within six (6) months after August 13, 1993” from the beginning, and deleted “and promulgate regulations” following “rules”.

Amendments. The 2019 amendment deleted “and regulations” from the end of the section heading; and, in the introduc-

8-6-1404. Land use.

(a) Six (6) months after August 13, 1993, it shall be unlawful for any person, partnership, company, corporation, or other entity to build, erect, or construct any house, home, or building to be used for residential purposes upon any land used as or which has been used as a solid waste landfill permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(b) On August 13, 1993, those houses, homes, and other buildings located on any land used as or which has been used as a solid waste landfill and which are currently being used for residential purposes shall be allowed to remain on that land and may be used for residential purposes.

(c)(1) The prohibitions of this subchapter and any rules promulgated under this subchapter’s authority shall be limited to application to the area of the land which was specifically used as a landfill for the placement and disposal of solid waste.

(2) The prohibitions of this subchapter and any rules promulgated under this subchapter’s authority shall not apply to landfills or the land which was specifically used as a landfill more than twenty-five (25) years before August 13, 1993.

History. Acts 1993, No. 718, § 2; 2019, No. 315, § 582. deleted “or regulations” following “rules” in (c)(1); and deleted “and regulations” following “rules” in (c)(2).

Amendments. The 2019 amendment

SUBCHAPTER 15 — SITING HIGH IMPACT SOLID WASTE MANAGEMENT FACILITIES

SECTION.

8-6-1502. Definitions.

8-6-1503. Division's permitting authority.

SECTION.

8-6-1504. Presumption against certain sites.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-6-1502. Definitions.

As used in this subchapter:

(1) "Hazardous substance sites" means the same as set out in § 8-7-503;

(2) "Hazardous waste" means the same as set out in § 8-7-203;

(3)(A) "High impact solid waste management facility" means, excluding the facilities described in subdivision (3)(B) of this section, any solid waste landfill, any solid or commercial hazardous waste incinerator, and any commercial hazardous waste treatment, storage, or disposal facility.

(B) "High impact solid waste management facility" does not include the following:

(i) Recycling or composting facilities;

(ii) Waste tire management sites;

(iii) Solid waste transfer stations;

(iv) Solid waste landfills which have applications pending for either increased or new acreage or provisions for additional services or increased capacity;

(v) A facility dedicated solely to the treatment, storage, or disposal of solid waste or hazardous waste generated by a private industry when the private industry bears the expense of operating and maintaining the facility solely for the disposal of waste generated by the industry or wastes of a similar kind or character;

(vi) A facility or activity dedicated solely to a response action at a location listed by the state or United States Government as a hazardous substance site;

(vii) An existing facility operating under the interim status of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., or implementing rules of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., or the Arkansas Hazardous Waste Management Code; or

(viii) Expansion of existing hazardous waste facilities under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., or the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., either through increased acreage or provision for additional services or increased capacity;

(4) “Host community” means the closest governmental unit as measured along major facility access roads and highways exercising zoning authority encompassed within a twelve-mile radius of the site of a proposed high impact solid waste management facility;

(5) “Permitting” means any governmental authorization to proceed with construction or operation of a facility or activity required by either state law or local ordinance; and

(6)(A) “Solid waste” means the same as set out in § 8-6-702.

(B) However, “solid waste” does not include hazardous waste as defined in this section.

History. Acts 1993, No. 1263, § 2; substituted “rules” for “regulations” in 2005, No. 1781, § 2; 2019, No. 315, § 583. (3)(B)(vii).

Amendments. The 2019 amendment

8-6-1503. Division’s permitting authority.

The Division of Environmental Quality shall not process any application for a permit subject to § 8-6-1504 until the affected local and regional authorities have issued definitive findings regarding the criteria set out in § 8-6-1504.

History. Acts 1993, No. 1263, § 4; substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the section heading; and substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in 2019, No. 910, § 2695.

Amendments. The 2019 amendment substituted “Division’s” for “Department’s” in the section heading; and substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-6-1504. Presumption against certain sites.

(a)(1) There shall be a rebuttable presumption against permitting the construction or operation of any high impact solid waste management facility, as defined in this subchapter, within twelve (12) miles of any existing high impact solid waste management facility.

(2) This presumption shall be honored by the Division of Environmental Quality, the regional solid waste management board with jurisdiction over the site, and any other governmental entity with permitting or zoning authority concerning any facility.

(b) The presumption in subsection (a) of this section can be rebutted if any of the following is shown:

(1) That no other suitable site for such a high impact solid waste management facility is available within the regional solid waste man-

agement district because of the restraints of geology or any other factors listed at § 8-6-706(b)(2); or

(2)(A) That incentives have prompted the host community to accept the siting of the high impact solid waste management facility.

(B) Such incentives may include, without limitation:

(i) Increased employment opportunities;

(ii) Reasonable host fees not to exceed the prevailing state average;

(iii) Contributions by the high impact solid waste management facility to the community infrastructure, e.g. road maintenance, park development, and litter control;

(iv) Compensation to adjacent individual landowners for any assessed decrease in property values; or

(v) Subsidization of community services.

History. Acts 1993, No. 1263, § 3; substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(2).
1999, No. 1164, § 83; 2019, No. 910, § 2696.

Amendments. The 2019 amendment

SUBCHAPTER 16 — FINANCIAL ASSURANCE

SECTION.

8-6-1601. Purpose.

8-6-1602. Definitions.

8-6-1603. Procedures generally.

SECTION.

8-6-1604. Solid Waste Performance Bond Fund.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-6-1601. Purpose.

(a) The purpose of this subchapter is to establish the procedure for posting financial assurance for all permitted solid waste management facilities.

(b) The procedure for issuance of permits for solid waste management facilities shall be as provided in the rules adopted by the Arkansas Pollution Control and Ecology Commission under this subchapter or as otherwise provided by law.

(c)(1) After an application to operate a solid waste management facility has been reviewed and approved but before a permit is issued, the applicant shall post with the Division of Environmental Quality, on forms prescribed by the division in accordance with the rules issued under this subchapter, a corporate surety bond for performance or an acceptable alternative, such as a certificate of deposit or letter of credit payable to the division and conditioned upon faithful performance of all requirements of this subchapter, the rules issued pursuant to this subchapter, and the permit, including, but not limited to, proper closure of the solid waste management facility.

(2) Liability under the bond shall be for the duration of the disposal operation and for that period required to properly close the solid waste management facility and for post-closure care, in accordance with the rules issued by the commission.

History. Acts 1995, No. 510, § 1; 1999, No. 758, § 1; 1999, No. 1164, § 84; 2019, No. 315, § 584; 2019, No. 910, § 2697.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (b); and substituted “rules” for “regulations” throughout (c).

The 2019 amendment by No. 910, in (c)(1), substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” and substituted “division” for “department” twice.

8-6-1602. Definitions.

As used in this subchapter:

(1) “Active life” means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities;

(2) [Repealed.]

(3) “Closure plan” means a written plan that describes the steps necessary to close any solid waste management facility at any point during its active life in accordance with the design requirements in rules issued pursuant to this subchapter, as applicable;

(4) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(5) [Repealed.]

(6) “Disposal site” or “disposal facility” means any place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling, composting, or any other method;

(7)(A) “Existing municipal solid waste landfill unit” means any municipal solid waste landfill unit that was receiving solid waste as of October 9, 1993, or April 9, 1994, as applicable to the Resource Conservation and Recovery Act of 1976, Subtitle D.

(B) Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management;

(8) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal, treatment, or processing of solid waste;

(9) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface, excluding manure and wastewater treatment sludge spreading operations, for agricultural purposes or for treatment and disposal;

(10) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit;

(11)(A) "Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile.

(B) A municipal solid waste landfill unit also may receive other types of Resource Conservation and Recovery Act of 1976, Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, small quantity generator waste, and industrial solid waste.

(C) Such a landfill may be publicly or privately owned.

(D) A municipal solid waste landfill unit may be a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion;

(12) "New municipal solid waste landfill unit" means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or April 9, 1994, as applicable;

(13) "Operator" means the person responsible for the overall operation of a facility or part of a facility;

(14) "Owner" means the person who owns a facility or part of a facility;

(15) "Person" means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or other legal entity, however organized;

(16) "Post-closure plan" means a written plan that provides a description of monitoring and maintenance activities required in rules issued pursuant to this subchapter and includes the frequency with which these activities will be performed;

(17) "RCRA, Subtitle D" means the United States Environmental Protection Agency, Office of Solid Waste, Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and the August 1991 Addendum for the Final Criteria for Municipal Solid Waste Landfills, 40 C.F.R. part 258;

(18) "Solid waste management system" means the entire process of storage, collection, transportation, processing, treatment, and disposal of solid waste and includes equipment, facilities, and operations designed for solid waste management activities, including recycling, source reduction, and the enforcement of solid waste management laws and ordinances;

(19) "State" means the State of Arkansas; and

(20)(A) "Surface impoundment" or "impoundment" means a facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with human-made materials, that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well.

(B) Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

History. Acts 1995, No. 510, § 1; 1999, No. 758, § 2; 1999, No. 1164, § 85; 2019, No. 315, §§ 585, 586; 2019, No. 693, § 17; 2019, No. 910, § 2698.

The 2019 amendment by No. 693 repealed (2).

The 2019 amendment by No. 910 repealed (5).

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (3) and (16).

8-6-1603. Procedures generally.

(a) FINANCIAL ASSURANCE FOR CLOSURE.

(1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the facility requiring closure as required under the rules issued pursuant to this subchapter and the permit during the active life of the facility in accordance with the closure plan.

(2) The cost estimate shall equal the cost of closing the largest area of any solid waste management facility requiring closure at any time during its active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

(3) During the active life of the solid waste management facility, the owner or operator shall annually adjust the closure cost estimate for inflation.

(4)(A) The owner or operator shall establish financial assurance for closure of any permitted solid waste management facility in compliance with the rules issued pursuant to this subchapter and the permit.

(B) The owner or operator of any solid waste management facility shall provide continuous financial assurance coverage for closure until released from financial assurance requirements by demonstrating compliance with rules issued pursuant to this subchapter and the permit.

(C) The amount of financial assurance shall be in accordance with § 8-6-1002(e) and the rules issued in § 8-6-1002(e).

(b) FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

(1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care in compliance with the post-closure plan developed under the rules issued pursuant to this subchapter and the permit.

(2) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(3) During the active life of the solid waste management facility and during the post-closure care period, the owner or operator shall annually adjust the post-closure cost estimate for inflation.

(4)(A) The owner or operator shall establish financial assurance for costs of post-closure care of any permitted solid waste management facility in compliance with rules issued pursuant to this subchapter and the permit.

(B) The owner or operator of any solid waste management facility shall provide continuous financial assurance coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with rules issued pursuant to this subchapter and the permit.

(c) FINANCIAL ASSURANCE FOR CORRECTIVE ACTION.

(1) The owner or operator, if required to undertake a corrective action program under rules issued pursuant to this subchapter, shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with rules issued pursuant to this subchapter.

(2)(A) The owner or operator of any solid waste management facility shall establish financial assurance for the most recent corrective action program.

(B) The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with rules issued pursuant to this subchapter.

(d) ALLOWABLE MECHANISMS.

(1) The mechanisms used to demonstrate financial assurance under this section shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed.

(2) The financial mechanisms shall be legally valid, binding, and enforceable under state and federal law.

(3) Owners and operators shall choose from the options specified in rules issued pursuant to this subchapter.

(4)(A) A municipality or county that owns or operates a solid waste management facility receiving any non-RCRA, Subtitle D waste may, in lieu of a performance bond, execute a contract of obligation with the Director of the Division of Environmental Quality.

(B) The contract of obligation shall be a binding agreement on the municipality or county, allowing the director or his or her designee to collect any general revenues being disbursed or to be disbursed from the state to the municipality or county on the failure of the municipality or county to fulfill the financial assurance requirements of this subchapter and rules issued pursuant to this subchapter.

(C) To assure that adequate funds necessary to meet the estimated costs for closure and post-closure care of any non-RCRA, Subtitle D solid waste management facility are available whenever they are needed, the estimated annual general revenue amount pledged under

a contract of obligation shall be at least equal to but not less than the estimated annual cost for closure and post-closure care to satisfy the financial assurance requirements for closure and post-closure care of this subchapter.

History. Acts 1995, No. 510, § 1; 1997, No. 938, § 4; 1999, No. 758, § 3; 1999, No. 1164, § 86; 2019, No. 315, §§ 587-594; 2019, No. 910, § 2699.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” throughout the section.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (d)(4)(A).

8-6-1604. Solid Waste Performance Bond Fund.

(a) A Solid Waste Performance Bond Fund is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(b) In addition to any moneys appropriated by the General Assembly to the fund, there shall be deposited into the fund all forfeitures collected under this subchapter, United States Government moneys designated to enter the fund, any moneys received by the state as a gift or donation to the fund, and all interest earned upon moneys deposited into the fund.

(c) The fund shall be administered by the Division of Environmental Quality and will be used to accomplish remedial action, including closure of lands covered by performance bonds forfeited under this subchapter.

(d) Moneys received annually into the fund shall be used by the division for the administration of remedial actions performed as a result of this subchapter.

History. Acts 1995, No. 510, § 1; 1997, No. 938, § 5; 2019, No. 910, § 2700.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in (c); and substituted “division” for “department” in (d).

SUBCHAPTER 17 — OPEN BURNING OF RESIDENTIAL YARD WASTE

SECTION.

8-6-1701. Definitions.

8-6-1703. Restrictions on open burning of yard waste.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that

these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Effi-

ciencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is

declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-6-1701. Definitions.

As used in this subchapter:

(1) "Open burning" means the incineration or combustion of waste materials as a method of disposal without any means to control the fuel/air ratio. None of the activities exempted from rules as air pollution in § 8-4-305 or in rules adopted by the Arkansas Pollution Control and Ecology Commission shall constitute "open burning", provided such activities do not cause a fire or safety hazard; and

(2) "Yard waste" means grass clippings, leaves, and shrubbery trimmings collected from residential property.

History. Acts 1997, No. 1151, § 1; substituted "rules" for "regulations" twice in (1).
2019, No. 315, § 595.

Amendments. The 2019 amendment

8-6-1703. Restrictions on open burning of yard waste.

(a) The open burning of yard waste is discouraged. Enforcement shall be through informal educational efforts, unless such efforts are proven to be manifestly ineffective in preventing specific instances of open burning.

(b) No citation or civil fine shall be issued or levied against the owner of a private residence for the open burning of brush or yard waste unless such open burning constitutes:

(1) A persistent or recurring offense to surrounding landowners, as determined by complaints to state or local officials;

(2) A fire hazard to surrounding property, as determined by appropriate local officials; or

(3) A safety hazard causing obscured vision on public roads or highways.

(c)(1) No citation or civil fine shall be issued or levied pursuant to the exception of subdivision (b)(1) of this section unless first preceded by a warning order or other appropriate notification delivered to the alleged violator by certified mail, restricted delivery, or other appropriate mechanism of legal service, indicating that a local or state agency has received a complaint concerning open burning activities. Such order or notification need not reveal the identity of the complainants. This order or notification shall advise the alleged violator of alternatives to open burning of yard waste.

(2) As used in subdivision (b)(1) of this section, "persistent or recurring" burning includes activities that are seasonal or annual. Each day of any event of open burning that continues following executed

service of a warning order or notification may justify a citation or civil fine unless the alleged violator takes reasonably diligent measures to extinguish or control the fire.

(d) Nothing in this subchapter shall be construed as impairing the authority of local fire control officials to abate fire hazards through whatever regulatory mechanisms deemed necessary and appropriate.

(e) Nothing in this subchapter shall be construed as impairing the authority of the Division of Environmental Quality to abate reasonably likely exceedances of National Ambient Air Quality Standards.

History. Acts 1997, No. 1151, § 3; 1999, No. 1164, § 87; 2019, No. 910, § 2701.

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (e).

Amendments. The 2019 amendment

SUBCHAPTER 18 — ANIMAL WASTE

SECTION.

8-6-1801. Management plan — Substitution.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-6-1801. Management plan — Substitution.

If the Division of Environmental Quality requires a person to obtain an animal waste management plan, including a permit application, prepared by a professional engineer as defined in § 17-30-101, the person may substitute a plan prepared under the supervision of a professional engineer employed by one (1) of the following agencies:

- (1) A conservation district;
- (2) The Arkansas Natural Resources Commission;
- (3) The United States Natural Resources Conservation Service; or
- (4) The University of Arkansas Cooperative Extension Service.

History. Acts 1997, No. 415, § 1; 1999, No. 1164, § 88; 2011, No. 897, § 9; 2019, No. 910, § 2702.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of En-

vironmental Quality” in the introductory language.

SUBCHAPTER 19 — STATEWIDE SOLID WASTE MANAGEMENT PLAN ACT

SECTION.

8-6-1902. Findings.

8-6-1903. Definitions.

SECTION.

8-6-1904. Development and implementation.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-6-1902. Findings.

The General Assembly makes the following findings:

- (1) The Division of Environmental Quality has been charged by the General Assembly with the responsibility of developing the Statewide Solid Waste Management Plan which, when feasible, gives emphasis to regional planning;
- (2) The difficult task of addressing the complex solid waste needs of the state on a regional basis has been accomplished by creating regional solid waste management boards;
- (3) The need for a Statewide Solid Waste Management Plan remains; and
- (4) The development and implementation of a Statewide Solid Waste Management Plan is necessary to protect the public’s health and the state’s environmental quality and to maximize the efficiency of regional solid waste management systems.

History. Acts 2001, No. 1376, § 1; 2019, No. 910, § 2703.

Amendments. The 2019 amendment

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (1).

8-6-1903. Definitions.

As used in this subchapter:

- (1) “Board” or “regional board” means a regional solid waste management board established pursuant to § 8-6-701 et seq.; and
- (2) “Commission” means the Arkansas Pollution Control and Ecology Commission.

(3) [Repealed.]

History. Acts 2001, No. 1376, § 1; 2019, No. 910, § 2704.

Amendments. The 2019 amendment repealed (3).

8-6-1904. Development and implementation.

(a) The Division of Environmental Quality shall develop the Statewide Solid Waste Management Plan to establish minimum requirements for all regional solid waste management plans, including requirements for:

- (1) Strategic planning;
- (2) Reporting;
- (3) Public notice and participation;
- (4) Services; and
- (5) Solutions to problems and issues.

(b) Within one (1) year after the Statewide Solid Waste Management Plan becomes final, each regional solid waste management board shall develop a regional solid waste management plan for division review and approval, which includes the minimum requirements contained in the Statewide Solid Waste Management Plan. This new regional solid waste management plan shall replace any existing regional solid waste management plan previously developed.

(c) Failure of any board to develop or implement any requirement contained in the Statewide Solid Waste Management Plan shall subject the board to:

- (1) The penalty and enforcement provisions contained in § 8-6-204; or
- (2) Denial, discontinuation, or reimbursement of any funding administered by the division to the board.

(d) The Arkansas Pollution Control and Ecology Commission may adopt reasonable rules necessary to implement or effectuate the purposes and intent of this subchapter.

History. Acts 2001, No. 1376, § 1; 2013, No. 1153, § 3; 2019, No. 315, § 596; 2019, No. 910, §§ 2705, 2706.

Amendments. The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a); and substituted “division” for “department” in (c)(2).

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (d).

SUBCHAPTER 20 — ENVIRONMENTAL COMPLIANCE RESOURCE ACT

SECTION.	SECTION.
8-6-2001. Title.	8-6-2008. Environmental Compliance Resource Program.
8-6-2002. Purpose.	8-6-2009. Promulgation of uniform environmental citation form.
8-6-2003. Definitions.	8-6-2010. Applicant eligibility — Training and examination — Certification fees.
8-6-2004. Applicability.	
8-6-2005. Prohibited conduct.	
8-6-2006. Commission power and duties.	
8-6-2007. Division power and duties.	

SECTION.

- 8-6-2011. Environmental officer authority.
- 8-6-2012. Issuing an environmental citation.
- 8-6-2013. Filing an environmental citation.
- 8-6-2014. Serving an environmental citation.

SECTION.

- 8-6-2015. Hearing on an environmental citation — Penalties.
- 8-6-2016. Remediation procedures for environmental citations.
- 8-6-2017. Fines and costs.
- 8-6-2018. Other authority unaffected.
- 8-6-2019. Agriculture exemption.

A.C.R.C. Notes. Acts 2019, No. 1067, § 11, provided: “(a) The purpose of this act is to have the Environmental Compliance Resource Program operational and to make illegal dump control officers unnecessary on or before May 1, 2020.

“(b) If legislation concerning the transformation of the Arkansas Department of Environmental Quality is enacted during this Regular Session of the General Assembly, the Arkansas Code Revisor and the Arkansas Code Revision Commission shall correct the references to the Arkan-

sas Department of Environmental Quality consistent with those laws”.

While Acts 2019, No. 1067, § 5, specifically repealed § 8-6-501 et seq. “effective May 1, 2020”, section 11 of that act appears to assume that should the Environmental Compliance Resource Program established in this subchapter become operational before May 1, 2020, then § 8-6-501 et seq. is superseded at that point in time, and is permanently repealed on May 1, 2020, whether the program is operational or not on that date.

8-6-2001. Title.

This subchapter shall be known and may be cited as the “Environmental Compliance Resource Act”.

History. Acts 2019, No. 1067, § 1.

8-6-2002. Purpose.

The purpose of this subchapter is to protect the public health, safety, and welfare of the state by:

- (1) Improving the operational efficiency of the Division of Environmental Quality concerning the resources provided to local governments and other state agencies, boards, and commissions;
- (2) Creating the Environmental Compliance Resource Program as a consolidated program to be administered by the division to provide resources to local governments and other state agencies, boards, and commissions;
- (3) Ensuring that cities, municipalities, counties, regional solid waste management districts, and state agencies, boards, and commissions have sufficient resources;
- (4) Authorizing the division to develop, implement, and administer an Environmental Compliance Resource Program; and
- (5) Modernizing, simplifying, and clarifying the law related to illegal dumping of solid waste and other similar issues that affect the public health, safety, and welfare.

History. Acts 2019, No. 1067, § 1.

8-6-2003. Definitions.

As used in this subchapter:

(1) “Alleged violator” means a person that has been issued an environmental citation under this subchapter by an environmental officer;

(2) “Cost statement” means a verified written statement that accounts for the cost of solid waste removal or other remediation, including without limitation receipts, and establishes that:

(A) The solid waste was removed from the location or the environmental violation at the location was otherwise remediated; and

(B) The solid waste was properly disposed of at one (1) or more of the following facilities:

(i) A permitted solid waste disposal facility;

(ii) A permitted solid waste processing facility;

(iii) A recycling center;

(iv) A scrap yard that purchases iron, steel, aluminum, or other metals; or

(v) Any other facility that an environmental officer finds to be a proper disposal facility for the solid waste;

(3) “Environmental officer” means an employee of a city, county, municipality, regional solid waste management district created under § 8-6-701 et seq., or state agency, board, or commission who has:

(A) Completed all requirements under this subchapter, including without limitation completing required training and passing the required examination, obtaining certification, being sworn in, and maintaining certification through continuing education; and

(B) Authority to enter land to investigate and inspect as provided under § 8-1-107 to enforce environmental laws under the authority of the Division of Environmental Quality;

(4) “Environmental violation” means an act or omission that:

(A) Is prohibited under § 8-6-2005; or

(B) Causes or results in the violation of a state law, rule, or order that is:

(i) Designed to protect the public health, safety, or welfare; and

(ii) Applicable to this subchapter under § 8-6-2004;

(5) “Illegal dumping of solid waste” means the illegal placing, depositing, dumping, or causing to be placed, deposited, or dumped by a person any solid waste that is prohibited by this chapter:

(A) In or upon a public or private highway, road, or street, including a portion of the right-of-way in or upon a public or private highway, road, or street;

(B) In or upon private property into or upon which the public is admitted by easement or license of the private property;

(C) In or upon a public park or other public property; or

(D) Upon property for which a permit has not been issued by the division;

(6)(A) “Illegal dump site” means a place where solid waste is disposed of in a manner that is prohibited by this chapter.

(B) “Illegal dump site” includes a place where one (1) or more of the following exists:

- (i) An attractive nuisance;
- (ii) A fire, health, or safety hazard;
- (iii) A potential source of surface or groundwater contamination;
- (iv) A waste tire site as defined in § 8-9-402; or
- (v) Other contamination that is hazardous to the public health or endangers the environment; and

(7) “Person” means an individual, municipality, other governmental entity, or other entity that is recognized by law with rights and duties.

History. Acts 2019, No. 1067, § 1.

8-6-2004. Applicability.

This subchapter applies to the enforcement of illegal dumping of solid waste in violation of this subchapter and the Used Tire Recycling and Accountability Act, § 8-9-401 et seq.

History. Acts 2019, No. 1067, § 1.

8-6-2005. Prohibited conduct.

An act or omission that results in one (1) or more of the following in this state is prohibited by this subchapter:

- (1) The illegal dumping of solid waste on public or private property;
- (2) The creation or participation in the creation or furtherance of an illegal dump site;
- (3) The disposal of solid waste that has resulted from a property owner’s own household activities on his or her own land if the disposal:
 - (A) Creates a public or private nuisance;
 - (B) Is a hazard to health; or
 - (C) Involves the open dumping of garbage; or
- (4) Any other environmental violation applicable to this subchapter under § 8-6-2004.

History. Acts 2019, No. 1067, § 1.

8-6-2006. Commission power and duties.

The Arkansas Pollution Control and Ecology Commission shall promulgate rules for the administration of the Environmental Compliance Resource Program under this subchapter.

History. Acts 2019, No. 1067, § 1.

8-6-2007. Division power and duties.

(a) The Division of Environmental Quality shall develop, implement, and administer an Environmental Compliance Resource Program as provided under this subchapter and pursuant to the rules promulgated by the Arkansas Pollution Control and Ecology Commission.

(b)(1) The division shall designate at least one (1) employee as a program coordinator.

(2) A program coordinator shall obtain the equivalent academic training and pass the equivalent test as an environmental officer under § 8-6-2010.

(3) If an employee designated under subdivision (b)(1) of this section has met the requirements under subdivision (b)(2) of this section, the Director of the Division of Environmental Quality shall issue a technical certificate that establishes that the employee holds the equivalent credentials as an individual who is certified as an environmental officer under § 8-6-2010.

(4) An employee who is certified as an environmental officer and is a program coordinator may perform the duties of an environmental officer within the state as well as other duties assigned by the director.

History. Acts 2019, No. 1067, § 1.

8-6-2008. Environmental Compliance Resource Program.

(a) The Director of the Division of Environmental Quality or his or her designee shall develop, implement, and administer the Environmental Compliance Resource Program.

(b) The program shall provide:

(1) Guidance and resources to all certified environmental officers;

(2) Evaluation of all applicants for initial training as an environmental officer;

(3) Coordination of training and examination of all potential environmental officers;

(4) Certification to individuals who have completed the required environmental officer training and examination;

(5) Coordination of continuing education for all certified environmental officers; and

(6) Other services as determined necessary by the director.

History. Acts 2019, No. 1067, § 1.

8-6-2009. Promulgation of uniform environmental citation form.

(a)(1) The Division of Environmental Quality shall develop and promulgate a uniform environmental citation form based on the laws applicable to this subchapter under § 8-6-2004 and conduct prohibited under § 8-6-2005 in consultation with the Attorney General.

(2) The uniform environmental citation form shall be used exclusively by all environmental officers in this state in issuing citations for environmental violations.

(b) Subsection (a) of this section does not prohibit a municipality, city, county, or regional solid waste management district from promulgating citation forms for use in enforcement of violations of their local ordinances or bylaws for violations other than environmental violations.

History. Acts 2019, No. 1067, § 1.

8-6-2010. Applicant eligibility — Training and examination — Certification fees.

(a)(1) An individual is eligible to apply for initial training as an environmental officer if the individual is a current employee of a municipality, city, county, regional solid waste management district, or state agency, board, or commission.

(2) The Director of the Division of Environmental Quality shall make the final determination on eligibility.

(b)(1) The Division of Environmental Quality shall designate approved environmental officer training and examination programs for eligible applicants and for annual renewals of the environmental certificate of a certified environmental officer.

(2) An eligible applicant or a certified environmental officer is responsible for payment of costs associated with his or her required training and examination.

(c)(1) For initial certification of an environmental officer, the division shall require from an applicant:

(A) Proof of completed training and a passing score on the examination from a division-approved environmental officer training and examination program; and

(B) Payment of a fee of fifty dollars (\$50.00).

(2) For annual renewal of the environmental officer certificate, the division shall require from a certified environmental officer:

(A) Proof of completed continuing education from an approved environmental officer training program in compliance with all applicable rules of the Arkansas Pollution Control and Ecology Commission; and

(B) Payment of a fee of twenty-five dollars (\$25.00).

History. Acts 2019, No. 1067, § 1.

8-6-2011. Environmental officer authority.

(a) An environmental officer under this subchapter may perform one (1) or more of the following duties to ensure compliance with and enforcement of this subchapter:

(1) Enter public or private property within the state to inspect suspected illegal dump sites, littering, or related complaints;

(2) Enter public or private property to collect evidence of illegal dumping of solid waste and littering and present the evidence to the prosecuting attorney or a court of competent jurisdiction where the offense was committed; and

(3) Perform all other duties specified in this subchapter necessary for the administration and enforcement of this subchapter.

(b) An environmental officer shall not have the power of arrest.

History. Acts 2019, No. 1067, § 1.

8-6-2012. Issuing an environmental citation.

(a) An environmental officer shall use the uniform environmental citation form under § 8-6-2009 to issue a citation for an alleged environmental violation under this subchapter.

(b) An environmental officer may issue a citation for an alleged environmental violation of this subchapter to an alleged violator within the territorial jurisdiction of the environmental officer's employer.

History. Acts 2019, No. 1067, § 1.

8-6-2013. Filing an environmental citation.

A citation for an alleged environmental violation issued by an environmental officer shall be filed in a district court of competent jurisdiction in the county where the alleged environmental violation was committed.

History. Acts 2019, No. 1067, § 1.

8-6-2014. Serving an environmental citation.

A citation for an alleged environmental violation issued under this subchapter shall be served in person or by mailing a copy of the citation by certified mail, restricted delivery, to either the address obtained from evidence collected from the environmental violation location or to the last known address of the alleged violator.

History. Acts 2019, No. 1067, § 1.

8-6-2015. Hearing on an environmental citation — Penalties.

(a)(1)(A) Except as provided under subdivision (a)(2) of this section, the alleged violator shall appear before the district court named within the citation at the location and time designated in the citation.

(B) The initial hearing shall occur no later than thirty (30) days after the time period expires for remediation of the alleged environmental violation.

(2) If the alleged environmental violation is remediated by the alleged violator within the time period established under § 8-6-2016

using the procedure under this subchapter, the district court shall dismiss the matter from the docket without hearing.

(3) If the environmental officer extends the time period for remediation under § 8-6-2016(c), the district court shall reschedule the hearing for not more than thirty (30) days after the extension for remediation.

(b) A district court having jurisdiction over a citation issued by an environmental officer may issue penalties under § 8-6-204 and may grant an available remedy referenced in this subchapter unless the remedy is not available to the district court.

(c)(1) A judgment entered under this subchapter:

(A) May be enforced in the same manner as any other judgment; and

(B) Is a final decision for purposes of appellate review.

(2) A person against which the judgment is entered may appeal the decision to circuit court.

(d) A judgment entered under this subchapter does not preclude claims under § 8-6-206 by another person.

History. Acts 2019, No. 1067, § 1.

8-6-2016. Remediation procedures for environmental citations.

(a)(1) The environmental officer shall set the time period an alleged violator has to remove the solid waste or otherwise remediate the environmental violation.

(2) The time period shall not exceed thirty (30) days from the date of the environmental citation.

(b) To determine the time period, the environmental officer shall consider without limitation:

(1) The severity of the environmental violation;

(2) The size of the environmental violation;

(3) The ability of the alleged violator to remove the solid waste and otherwise remediate the environmental violation; and

(4) Any other factor that affects the alleged violator's capability to remove the solid waste and otherwise remediate the environmental violation.

(c)(1) The environmental officer may extend the time period under subsection (a) of this section if the alleged violator has exercised due diligence to remediate the environmental violation but cannot complete the remediation within the time period set due to one (1) or more of the factors under subsection (b) of this section.

(2) If the environmental officer extends the time period under subdivision (c)(1) of this section, the environmental officer shall notify the district court with jurisdiction over the environmental citation hearing under § 8-6-2015 and request rescheduling of the hearing.

(d) If the alleged violator removes the solid waste from the location or otherwise remediates the environmental violation, the alleged violator shall present to the environmental officer a cost statement.

(e)(1) If the alleged violator has removed the solid waste or remediated the environmental violation and presented a cost statement to the environmental officer, the environmental officer shall file an affidavit with the district court that establishes that the environmental violation has been remediated and the environmental citation is withdrawn.

(2) The affidavit shall include the cost statement and the results of an investigation that the environmental officer has completed at the location of the environmental violation.

(f) After filing the affidavit under subsection (e) of this section, the environmental officer shall notify the district court that the hearing required under § 8-6-2015 is unnecessary and the environmental citation has been withdrawn.

(g) The environmental officer shall provide a copy of the affidavit under subsection (e) of this section to the Environmental Compliance Resource Program.

History. Acts 2019, No. 1067, § 1.

8-6-2017. Fines and costs.

(a) If fines and costs are not paid for judgments for violations of this subchapter, the party that has not paid the fines and costs is subject to an administrative or civil enforcement action under law or rule, or both.

(b) Sanctions for nonpayment may include administrative, civil, or criminal penalties as provided in the applicable law or rule, or both.

History. Acts 2019, No. 1067, § 1.

8-6-2018. Other authority unaffected.

This subchapter does not limit the authority of an employee of:

(1) A municipality, city, county, or regional solid waste management district to issue a citation for a violation of a local ordinance or bylaw; or

(2) A state agency, board, or commission with the statutory duty to enforce other state laws or rules, federal laws or regulations, or local ordinances.

History. Acts 2019, No. 1067, § 1.

8-6-2019. Agriculture exemption.

(a) Except as provided under subsection (b) of this section, the Arkansas Solid Waste Management Act, § 8-6-201 et seq., this subchapter, and § 8-6-901 et seq. do not apply to:

(1) The disposal of solid waste if the disposal:

(A) Results from operations of farms, grain elevators, cotton gins, and similar industries;

(B) Is at a place where agricultural gleanings and crop residue that result from operations of farms, grain elevators, cotton gins, and similar industries are being land applied in accordance with current

management practices of the industries or the agricultural community; and

(C) Has been authorized and consented to by the landowner; or

(2) A landowner who disposes of solid waste on the property where the solid waste results from agricultural or farming operations or household operations.

(b) The exemptions under subsection (a) of this section do not apply to a disposal of solid waste if the disposal:

(1) Creates:

(A) An illegal dump site;

(B) A public or private nuisance; or

(C) A fire, health, or safety hazard to the public; or

(2) Involves the open dumping of garbage.

History. Acts 2019, No. 1067, § 1.

CHAPTER 7

HAZARDOUS SUBSTANCES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS HAZARDOUS WASTE MANAGEMENT ACT OF 1979.
3. ARKANSAS RESOURCE RECLAMATION ACT OF 1979.
5. REMEDIAL ACTION TRUST FUND ACT.
6. LOW-LEVEL RADIOACTIVE WASTE.
7. FEDERALLY LISTED HAZARDOUS SITES.
8. REGULATED SUBSTANCE STORAGE TANKS.
9. PETROLEUM STORAGE TANK TRUST FUND ACT.
10. PUBLIC EMPLOYEES' CHEMICAL RIGHT TO KNOW ACT.
11. VOLUNTARY CLEANUP.
12. ABANDONED AGRICULTURAL PESTICIDE DISPOSAL ACT.
13. PHASE I ENVIRONMENTAL SITE ASSESSMENT CONSULTANT ACT.
14. CONTROLLED SUBSTANCES CONTAMINATED PROPERTY CLEANUP ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

8-7-101. Civil liability of those assisting
at accidents — Definitions.

8-7-101. Civil liability of those assisting at accidents — Definitions.

(a) As used in this section, unless the context otherwise requires:

(1) “Discharge” means spillage, leakage, seepage, fire, explosion, or other release; and

(2) “Hazardous materials” means all materials and substances which are designated or defined as hazardous by law or rule of this state or by law or regulation of the United States Government.

(b) Notwithstanding any law to the contrary, no individual, partnership, corporation, association, or other entity shall be liable in civil

damages as a result of acts taken, voluntarily and without compensation, in the course of rendering care, assistance, or advice with respect to an incident creating a danger to person, property, or the environment as a result of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, disposing of, or attempting to prevent, clean up, or dispose of any such discharge.

(c) This section shall not preclude liability for civil damages as the result of gross negligence. Reckless, willful, or wanton misconduct shall constitute gross negligence.

History. Acts 1983, No. 913, §§ 1-3; A.S.A. 1947, §§ 82-4225 — 82-4227; Acts 2019, No. 315, § 597.

Amendments. The 2019 amendment substituted “rule” for “regulation” in (a)(2).

SUBCHAPTER 2 — ARKANSAS HAZARDOUS WASTE MANAGEMENT ACT OF 1979

SECTION.

- 8-7-202. Purpose.
- 8-7-203. Definitions.
- 8-7-204. Criminal, civil, and administrative penalties.
- 8-7-205. Unlawful actions.
- 8-7-206. Private right of action.
- 8-7-208. Official agency for program and agreements.
- 8-7-209. Powers and duties of the division and commission generally.
- 8-7-210. Existing rules, etc.
- 8-7-212. Considerations in administration.
- 8-7-213. Procedure generally.
- 8-7-214. Emergency order for imminent hazard.
- 8-7-215. Permits — Requirement.
- 8-7-216. Permits — Issuance generally — Interim operations.
- 8-7-217. Permits — Notice of hearing.

SECTION.

- 8-7-218. Permits — Compliance with subchapter, state and federal standards, regulations, etc.
- 8-7-219. Permits — Commercial facilities — Terms and conditions.
- 8-7-220. Permits — Duration — Renewal.
- 8-7-221. Permits — Revocation.
- 8-7-222. Permits — Hearing upon denial, revocation, or modification.
- 8-7-223. Location of landfill.
- 8-7-224. Rules for transporting hazardous waste.
- 8-7-225. Records and examinations.
- 8-7-226. Fees — Fund established.
- 8-7-227. Corrective action at permitted facilities and interim status facilities.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-7-202. Purpose.

It is the purpose of this subchapter and it is declared to be the policy of this state to:

- (1) Protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous waste;
- (2) Establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous waste;
- (3) Assure the safe and adequate management of hazardous waste within this state;
- (4) Qualify the Division of Environmental Quality to adopt, administer, and enforce a hazardous waste program pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; and
- (5) Afford the people of the State of Arkansas a voice in the permitting of hazardous waste facilities within their respective counties.

History. Acts 1979, No. 406, § 2; A.S.A. 1947, § 82-4202; Acts 1989, No. 643, § 1; 1999, No. 1164, § 89; 2019, No. 910, § 2707.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (4).

8-7-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) “Commission” means the Arkansas Pollution Control and Ecology Commission;
- (2) [Repealed.]
- (3) [Repealed.]
- (4) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water in whatever manner so that such hazardous waste or any constituent thereof might or might not enter the environment or be emitted into the air or discharged into any waters including groundwaters;
- (5) “Facility” means any land and appurtenances thereon and thereto used for the treatment, storage, or disposal of hazardous waste;
- (6) “Generation” means the act or process of producing waste materials;
- (7)(A) “Hazardous waste” means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may in the judgment of the Division of Environmental Quality:
 - (i) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
 - (ii) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise improperly managed.

(B) “Hazardous waste” includes, but is not limited to, those which are radioactive, toxic, corrosive, flammable, irritants, or strong sensitizers or those which generate pressure through decomposition, heat, or other means;

(8) “Hazardous waste management” means the systematic control of the generation, collection, distribution, marketing, source separation, storage, transportation, processing, recovery, disposal, and treatment of hazardous waste;

(9) “Manifest” means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transport;

(10) “Person” means any individual, corporation, company, firm, partnership, association, trust, joint-stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized;

(11) “Site” means any real property located within the boundary of the State of Arkansas contemplated or later acquired for the purpose of, but not limited to, landfills or other facilities to be used for treatment, storage, disposal, or generation of hazardous waste;

(12)(A) “Storage” means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of hazardous waste.

(B) Storage by means of burial shall be deemed to constitute disposal within the meaning of this subchapter;

(13) “Transport” means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal;

(14) “Treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the hazardous waste or to render the hazardous waste less hazardous, safer for transport, amenable to recovery, amenable to storage, amenable to disposal, or reduced in volume; and

(15) “Treatment facility” means a location at which waste is subjected to treatment and may include a facility where waste has been generated.

History. Acts 1979, No. 406, § 3; A.S.A. 1947, § 82-4203; Acts 1989, No. 643, § 2; 1993, No. 994, § 2; 1997, No. 1219, § 9; 1999, No. 1164, § 90; 2019, No. 910, §§ 2708, 2709.

Amendments. The 2019 amendment repealed (2) and (3); and substituted “Division of Environmental Quality” for “department” in the introductory language of (7)(A).

8-7-204. Criminal, civil, and administrative penalties.

(a) CRIMINAL PENALTIES.

(1)(A) Any person who violates any provision of this subchapter, who commits any unlawful act under this subchapter, or who violates any

rule or order of the Arkansas Pollution Control and Ecology Commission or the Division of Environmental Quality shall be guilty of a misdemeanor.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than one (1) year or a fine of not more than twenty-five thousand dollars (\$25,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) It shall be unlawful for a person to:

(i) Violate any provision of this subchapter, commit any unlawful act under this subchapter, or violate any rule or order of the commission or the division, and leave the state or remove his or her person from the jurisdiction of this state; or

(ii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under this subchapter or falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this subchapter.

(B) A person who violates this subdivision (a)(2) shall be guilty of a felony. Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than five (5) years or a fine of not more than fifty thousand dollars (\$50,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(3)(A) Any person who treats, stores, transports, or disposes of any hazardous waste and purposely, knowingly, or recklessly causes the release of hazardous waste into the environment in a manner not otherwise permitted by law or creates a substantial likelihood of endangering human health, animal or plant life, or property shall be guilty of a felony.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than ten (10) years or a fine of not more than one hundred thousand dollars (\$100,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(4)(A) Any person who treats, stores, transports, or disposes of any hazardous waste and purposely, knowingly, or recklessly causes the release of hazardous waste into the environment in a manner not otherwise permitted by law, thereby placing another person in imminent danger of death or serious bodily injury, shall be guilty of a felony.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than twenty (20) years or a fine of not more than two hundred fifty thousand dollars (\$250,000), or subject to both such fine and impris-

onment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(5) Notwithstanding the limits on fines set in subdivisions (a)(1)-(4) of this section, if a person convicted under any of subdivisions (a)(1)-(4) of this section has derived pecuniary gain from commission of the offenses, then he or she may be sentenced to pay a fine not to exceed two (2) times the amount of the pecuniary gain.

(b) CIVIL PENALTIES. The division may institute a civil action in any court of competent jurisdiction to accomplish any of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter and of any rules, orders, permits, or plans issued pursuant thereto;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the division and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed twenty-five thousand dollars (\$25,000) per day for violations of this subchapter and of any rules, permits, or plans issued pursuant to this subchapter; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

(c) Any person who violates any provision of this subchapter and rules, permits, or plans issued pursuant to this subchapter may be assessed an administrative civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation. Each day of a continuing violation may be deemed a separate violation for purposes of civil penalty assessment. No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with rules adopted by the commission. All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229. The procedures of this subsection may also be used to recover all costs, expenses, and damages to the division and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages.

(d) As an alternative to the limits on civil penalties set in subsections (b) and (c) of this section, if a person found liable in actions brought under subsection (b) or subsection (c) of this section has derived pecuniary gain from commission of the offenses, then he or she may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

(e)(1) All moneys collected as reimbursement for expenses, costs, and damages to the division shall be deposited into the operating fund of the division.

(2) All moneys collected as civil penalties pursuant to this section shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

(3)(A) In his or her discretion, the Director of the Division of Environmental Quality may authorize in-kind services as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

(B) The violator may provide in-kind services or cash contributions as directed by the division by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the in-kind services, by arranging and providing financing for the in-kind services, or by other financial arrangements initiated by the division in which the violator and the division retain no monetary benefit, however remote.

(C) The in-kind services shall not duplicate or augment services already provided by the division through appropriations of the General Assembly.

(4) All moneys collected to cover the costs, expenses, or damages of other agencies or subdivisions of the state, including natural resource damages, shall be distributed to the appropriate governmental entity.

(f) The culpable mental states referenced throughout this section shall have the same definitions as set out in § 5-2-202.

(g) Solicitation or conspiracy, as defined by the Arkansas Criminal Code at § 5-3-301 et seq. and § 5-3-401 et seq., to commit any criminal act proscribed by this section and §§ 8-4-103 and 8-6-204 shall be punishable as follows:

(1) Any solicitation or conspiracy to commit an offense under this section which is a misdemeanor shall be a misdemeanor subject to fines not to exceed fifteen thousand dollars (\$15,000) per day of violation or imprisonment for more than six (6) months, or both such fine and imprisonment;

(2) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to fines up to thirty-five thousand dollars (\$35,000) per day or imprisonment up to two (2) years, or both such fine and imprisonment;

(3) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of one hundred thousand dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to fines up to seventy-five thousand dollars (\$75,000) per day or imprisonment up to seven (7) years, or both such fine and imprisonment; and

(4) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to fines up to one hundred fifty thousand dollars (\$150,000) per day or imprisonment up to fifteen (15) years, or both such fine and imprisonment.

(h) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environmental effects caused by his or her activities may be considered by the court to be restitution as contemplated by § 5-4-301.

(i) A business organization, its agents or officers, may be found liable under this section in accordance with the standards set forth in § 5-2-501 et seq. and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).

(j) For the purposes of this subchapter, the court may assess against the State of Arkansas reasonable attorney's fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed in an action against the state for failure to comply with the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1979, No. 406, § 13; 1983, No. 456, § 1; A.S.A. 1947, § 82-4213; Acts 1989, No. 643, § 3; 1991, No. 435, § 1; 1991, No. 1057, §§ 2, 5; 1993, No. 731, § 2; 1995, No. 895, § 6; 2005, No. 1824, § 7; 2019, No. 315, §§ 598-602; 2019, No. 910, §§ 2710-2716.

Amendments. The 2019 amendment by No. 315 deleted "regulation" following "rule" in (a)(1)(A) and (a)(2)(A)(i); in (b), deleted "regulations" following "rules" in

(b)(1) and (b)(4); and, in (c), deleted "regulations" preceding "rules" in the first sentence, and substituted "rules" for "regulations" in the third sentence.

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(1)(A) and (e)(3)(A); and substituted "division" for "department" throughout the section.

8-7-205. Unlawful actions.

It shall be unlawful for any person to:

(1) Violate any provisions of this subchapter or of any rule, permit, or order adopted or issued under this subchapter;

(2) Knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this subchapter or falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this subchapter or any rules adopted pursuant thereto;

(3) Dispose of hazardous waste at any disposal site or facility other than one for which a permit has been issued by the Division of Environmental Quality pursuant to this subchapter; or

(4) Store, collect, transport, treat, or dispose of any hazardous waste contrary to the rules, permits, or orders issued under this subchapter or in such a manner or place as to create or as is likely to be created a public nuisance or a public health hazard or to cause or is likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

History. Acts 1979, No. 406, § 12; A.S.A. 1947, § 82-4212; Acts 2019, No. 315, §§ 603, 604; 2019, No. 910, § 2717.

Amendments. The 2019 amendment by No. 315 deleted "regulation" following "rule" in (1); deleted "or regulations" fol-

lowing “rules” in (2); and deleted “regulations” following “rules” in (4).

The 2019 amendment by No. 910 substituted “Division of Environmental Qual-

ity” for “Arkansas Department of Environmental Quality” in (3).

8-7-206. Private right of action.

Any person adversely affected by a violation of this subchapter or of any rules or orders issued pursuant thereto shall have a private right of action for relief against such violation.

History. Acts 1979, No. 406, § 15; A.S.A. 1947, § 82-4215; Acts 2019, No. 315, § 605.

Amendments. The 2019 amendment deleted “regulations” following “rules”.

RESEARCH REFERENCES

ALR. Private Cause of Action Under State Hazardous Waste Regulations, 25 A.L.R.7th Art. 3 (2018).

8-7-208. Official agency for program and agreements.

(a) The Division of Environmental Quality is designated as the official agency for the state for all purposes of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and for the purpose of such other state or federal legislation as may be enacted to assist in the management of hazardous wastes.

(b)(1) The General Assembly encourages cooperative activities by the division with other states for the improved management of hazardous wastes and, so far as is practicable, uniform state laws relating to the management of hazardous wastes and compacts between this and other states for the improved management of hazardous wastes.

(2) The division may enter into agreements with the responsible authorities of the United States or of other states, subject to approval by the Governor, relative to policies, methods, means, and procedures to be employed in the management of hazardous wastes not inconsistent with the provisions of this subchapter and may carry out such agreements.

History. Acts 1979, No. 406, § 10; A.S.A. 1947, § 82-4210; Acts 2019, No. 910, § 2718.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (b)(1) and (b)(2).

8-7-209. Powers and duties of the division and commission generally.

(a) The Division of Environmental Quality shall have the following powers and duties:

(1) To administer and enforce all laws and rules regarding hazardous waste management;

(2) To conduct and publish such studies of hazardous waste management in this state as shall be deemed appropriate, including, but not limited to:

(A) A description of the sources of hazardous waste generated within the state;

(B) Information regarding the types and quantities of such hazardous waste; and

(C) A description of current hazardous waste management practices and costs including treatment, recovery, and disposal;

(3) To develop, publish, and implement plans in accordance with the provisions of this subchapter for the safe and effective management of hazardous waste within this state, including, but not limited to:

(A) The establishment of criteria for the identification of those locations within the state which are suitable for establishment of hazardous waste treatment or disposal facilities or sites; and

(B) Those locations which are not suitable for such purposes;

(4) To establish criteria for determination of whether any waste or combination of wastes is hazardous for purposes of this subchapter and to identify and specify wastes or combination of wastes as being hazardous;

(5) To issue, continue in effect, revoke, modify, or deny, under such conditions as it may prescribe, permits for the establishment, construction, operation, or maintenance of hazardous waste treatment, storage, or disposal facilities or sites, as more particularly prescribed by §§ 8-7-215 — 8-7-222;

(6) To make such investigations and inspections and to hold such hearings, after notice, as the division may deem necessary or advisable for the discharge of the division's duties under this subchapter and to ensure compliance with this subchapter and any orders and rules issued pursuant thereto;

(7) To make, issue, modify, revoke, and enforce orders, after notice and hearing, prohibiting violation of any of the provisions of this subchapter or of any rules issued pursuant thereto or any permit issued thereunder, and requiring the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;

(8)(A) To institute proceedings in the name of the division in any court of competent jurisdiction to compel compliance with and to restrain any violation of the provisions of this subchapter or any rules and orders issued pursuant thereto or any permit issued thereunder, and require the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter.

(B) In any civil action in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the requested relief not be granted, nor that the remedy at law is inadequate;

(9) To initiate, conduct, and support research, demonstration projects, and investigations, and coordinate all state agency research programs pertaining to hazardous waste management, and establish technical advisory committees to assist in the development of procedures, standards, criteria, and rules, the members of which may be reimbursed for travel expenses in accordance with § 25-16-901 et seq.;

(10) To establish policies and standards for effective hazardous waste management;

(11) To establish standards and procedures for the certification of personnel to operate hazardous waste treatment or disposal facilities or any commercial hazardous waste management facilities; and

(12) In addition to the powers enumerated in subdivisions (a)(1)-(11) of this section, the division shall have and may use in the administration and enforcement of this subchapter all of the powers which the division has under other laws administered by the division, including the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., and the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(b) The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

(1) To adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules regarding hazardous waste management as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter and the powers and duties of the division under this subchapter, including, but not limited to, rules for:

(A) The containerization and labeling of hazardous waste, which rules, to the extent practicable, shall be consistent with those issued by the United States Department of Transportation, the United States Environmental Protection Agency, the State Highway Commission, and the Arkansas Department of Transportation;

(B) Establishing standards and procedures for the safe operation and maintenance of facilities;

(C) Identifying those wastes or combination of wastes which are incompatible and which may not be stored or disposed of together and procedures for preventing the storage, disposal, recovery, or treatment of incompatible wastes together;

(D) The reporting of hazardous waste management activities;

(E) Establishing standards and procedures for the certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites as required under § 8-7-219(3); and

(F) Establishing a manifest system for the transport of hazardous waste and prohibiting the receipt of hazardous waste at storage, processing, recovery, disposal, or transport facilities or sites without a properly completed manifest;

(2)(A) In promulgation of such rules, prior to the submittal to public comment and review of any rule or change to any rule that is more stringent than federal requirements, the Arkansas Pollution Control and Ecology Commission shall duly consider the economic impact and the environmental benefit of such rule on the people of the State of Arkansas, including those entities that will be subject to the rule.

(B) The Arkansas Pollution Control and Ecology Commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(2)(A) of this section.

(C) The extent of the analysis required under subdivision (b)(2)(A) of this section shall be defined in the Arkansas Pollution Control and Ecology Commission's rulemaking required under subdivision (b)(1) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(D) Upon completion of the public comment period, the Arkansas Pollution Control and Ecology Commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent rule;

(3) Promulgation of rules and procedures not otherwise governed by applicable law which the Arkansas Pollution Control and Ecology Commission deems necessary to secure public participation in environmental decision-making processes;

(4) Promulgation of rules governing administrative procedures for challenging or contesting division actions;

(5) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Division of Environmental Quality or his or her delegatee;

(6) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(7) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(8) Make recommendations to the director regarding overall policy and administration of the division, provided, however, that the director shall always remain within the plenary authority of the Governor; and

(9) Upon a majority vote, initiate review of any director's decision.

History. Acts 1979, No. 406, § 4; A.S.A. 1947, § 82-4204; Acts 1989, No. 643, § 4; 1997, No. 250, § 48; 1997, No. 1055, § 2; 1997, No. 1219, § 9; 2017, No. 707, § 9; 2019, No. 315, §§ 606-611; 2019, No. 693, § 18; 2019, No. 910, §§ 2719-2725.

Amendments. The 2019 amendment by No. 315 substituted "and rules" for "rules and regulations" in (a)(1) and (a)(6); deleted "and regulations" following "rules" in (a)(7), (a)(9), twice in the introductory

language of (b)(1), and in (b)(4); rewrote (b)(2)(A); substituted "rule" for "regulation" in (b)(2)(D); and deleted "regulations" following "rules" in (b)(3).

The 2019 amendment by No. 693 substituted "in subdivisions (a)(1)-(11) of this section" for "above" in (a)(12).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" throughout the section.

8-7-210. Existing rules, etc.

(a) All existing rules of the Division of Environmental Quality not inconsistent with the provisions of this subchapter relating to subjects

embraced within this subchapter shall remain in full force and effect until expressly repealed, amended, or superseded by the Arkansas Pollution Control and Ecology Commission, insofar as the rules do not conflict with the provisions of this subchapter.

(b) All orders entered, permits granted, and pending legal proceedings instituted by the division relating to subjects embraced within this subchapter shall remain unimpaired and in full force and effect until superseded by actions taken by the division or commission under this subchapter.

(c) No existing civil or criminal remedies, public or private, for any wrongful action shall be excluded or impaired by this subchapter.

(d) The provisions of this subchapter and the rules promulgated pursuant to this subchapter shall govern if they conflict with the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or any action taken by the division or commission under those laws.

History. Acts 1979, No. 406, § 15; A.S.A. 1947, § 82-4215; Acts 2019, No. 315, §§ 612, 613; 2019, No. 910, § 2726.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (a) and (d). The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” twice in (b) and in (c).

8-7-212. Considerations in administration.

(a) In administering the provisions of this subchapter, the Division of Environmental Quality may adopt and give appropriate effect to variations within this state in climate, geology, population density, and such other factors as may be relevant to the management of hazardous waste, the establishment of standards and permit conditions, and to the siting of permitted facilities.

(b) To the extent practicable, the rules and procedures adopted by the division pursuant to this subchapter shall be consistent with other environmentally related rules and procedures of the division. In administering the provisions of this subchapter and of all other laws under the administration of the division, the division and the Arkansas Pollution Control and Ecology Commission shall coordinate and expedite the issuance of permits required by an applicant under one (1) or more laws, to the end of eliminating, insofar as practicable, any duplication of unnecessary time and expense to the applicant and the division.

(c) The division shall integrate all provisions of this subchapter with the appropriate provisions of all other laws which grant regulatory authority to the division for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable.

History. Acts 1979, No. 406, § 6; A.S.A. 1947, § 82-4206; Acts 2019, No. 315, § 614; 2019, No. 910, § 2727.

Amendments. The 2019 amendment by No. 315 deleted “regulations” following “rules” twice in the first sentence in (b).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” throughout (b) and (c).

8-7-213. Procedure generally.

The procedure of the Division of Environmental Quality and the Arkansas Pollution Control and Ecology Commission for issuance of rules, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in § 8-4-101 et seq. and § 8-4-201 et seq., including, but not limited to, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229 if they are not in conflict with the provisions set forth in this subchapter.

History. Acts 1979, No. 406, § 9; A.S.A. 1947, § 82-4209; Acts 2019, No. 315, § 615; 2019, No. 910, § 2728.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules”.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-7-214. Emergency order for imminent hazard.

(a)(1) Notwithstanding any other provisions of this subchapter, the Director of the Division of Environmental Quality, upon finding that the storage, transportation, treatment, or disposal of any waste may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare, he or she may, without notice or hearing, issue an order reciting the existence of such an imminent hazard and emergency and requiring that such action be taken as he or she determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(2) The order of the director may include, but is not limited to, directing the operator of the treatment or disposal facility or site or the custodian of the waste which constitutes the hazard to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard and, with respect to a facility or site, may order cessation of operation.

(b)(1) Any person to whom the order is directed shall comply with it immediately, but, on written application to the director within ten (10) days of the issuance of the order, that person shall be afforded a hearing before the Arkansas Pollution Control and Ecology Commission within ten (10) days after receipt of the written request.

(2) On the basis of the hearing, the commission shall continue the order in effect or shall revoke or modify it.

History. Acts 1979, No. 406, § 8; A.S.A. 1947, § 82-4208; Acts 2019, No. 910, § 2729. substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(1).

Amendments. The 2019 amendment

8-7-215. Permits — Requirement.

(a) No person shall construct, substantially alter, or operate any hazardous waste treatment or disposal facility or site, nor shall any person store, treat, or dispose of any hazardous waste without first obtaining a permit from the Division of Environmental Quality for the facility, site, or activity.

(b) Persons who construct, substantially alter, or operate a facility which generates hazardous waste shall be subject to the reporting requirements of this subchapter but shall not be required to obtain a permit under this subchapter unless such person also stores, treats, or disposes of hazardous waste.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1997, No. 1055, § 3; 2019, No. 910, § 2730. substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a).

Amendments. The 2019 amendment

8-7-216. Permits — Issuance generally — Interim operations.

(a) A permit shall be issued under such terms and conditions as the Division of Environmental Quality may prescribe under this subchapter and under the terms and conditions the Arkansas Department of Transportation may prescribe for the transportation of hazardous waste.

(b) [Repealed.]

(c)(1) A facility required to have a permit under this subchapter due to statutory or regulatory changes which occur after March 14, 1979, may continue in operation until such time as a permit is issued under this subchapter, provided that the owner or operator notifies the division of newly regulated activities at the facility within ninety (90) days of the effective date of each statutory or regulatory change and makes initial permit application within one hundred eighty (180) days of the effective date of such changes on forms provided by the division.

(2) This subsection shall not apply to any facility at which interim operating authority or a final permit has previously been terminated or denied.

(d) Interim operating authority acquired pursuant to subsection (b) of this section shall terminate for incineration facilities on November 8, 1989, unless the owner or operator applied for final permit determination by November 8, 1986.

(e) Interim operating authority acquired pursuant to subsection (b) of this section shall terminate for storage and treatment facilities on November 8, 1992, unless the owner or operator applied for final permit determination by November 8, 1988.

(f) Interim operating authority acquired pursuant to subsection (c) of this section for a land disposal facility shall terminate twelve (12) months after the land disposal facility first becomes subject to permitting unless the owner or operator certifies compliance with all applicable groundwater monitoring and financial responsibility requirements.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 6; 1991, No. 489, § 1; 1991, No. 786, § 8; 1999, No. 340, § 2; 2017, No. 707, § 10; 2019, No. 910, §§ 2731, 2732.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a) and twice in (c)(1); and repealed (b).

8-7-217. Permits — Notice of hearing.

No permit shall be issued by the Division of Environmental Quality or the Arkansas Pollution Control and Ecology Commission for any commercial hazardous waste treatment, storage, or disposal facility unless thirty (30) days’ advance notice of a hearing has been placed in the largest newspaper published in the county in which a commercial hazardous waste treatment, storage, or disposal facility or facilities are located or proposed to be located, as well as published in the largest newspaper published in the adjoining counties. If there is no newspaper published in any of the counties so affected, the notice shall be published in the newspaper having the largest circulation in the county.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 2019, No. 910, § 2733.

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

Amendments. The 2019 amendment

8-7-218. Permits — Compliance with subchapter, state and federal standards, regulations, etc.

(a) No permits shall be issued by the Division of Environmental Quality for any facility unless the division, after opportunity for public comment, has determined that the facility has been designed and will be operated in such manner that any emission from the facility will comply with the provisions of this subchapter and all applicable state and federal standards and state rules and federal regulations concerning air and water quality and that the transfer, handling, and storage of materials within the facility will not cause conditions which would violate state and federal standards concerning worker safety or create unreasonable hazards to the environment or to the health and welfare of the people living and working in or near the facility.

(b)(1) No permit shall be issued by the division for any commercial disposal or storage facility off the site where the hazardous waste is generated until the division has adopted rules, standards, and procedures pursuant to § 8-7-209.

(2) The rules, standards, procedures, or other requirements adopted and imposed by the division shall not be less stringent than the

regulations promulgated or revised by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.

(c) No permit shall be issued for hazardous waste treatment, storage, or disposal facilities except under the terms of rules of the division which conform to the provisions of § 3005 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6925.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 7; 1999, No. 1164, § 91; 2019, No. 315, § 616; 2019, No. 910, § 2734.

Amendments. The 2019 amendment by No. 315 inserted “state rules and federal” in (a); deleted “regulations” following “rules” twice in (b); and substituted “rules” for “regulations” in (c).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” throughout the section.

8-7-219. Permits — Commercial facilities — Terms and conditions.

No permit shall be issued for any commercial hazardous waste treatment, storage, or disposal facility unless that facility meets such terms and conditions as the Division of Environmental Quality may determine, including, but not limited to:

(1) Evidence of liability insurance in such amount as the division may determine to be necessary for the protection of the public health and safety and the protection of the environment;

(2) Evidence of financial responsibility in such form and amount as the division may determine to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of the facility, all appropriate measures are taken to prevent present and future damage to the public health and safety and to the environment;

(3)(A) Evidence that the personnel employed at the hazardous waste treatment or disposal facility meet such qualifications as to education and training as the division may determine to be necessary to assure the safe and adequate operation of the facility.

(B) Persons charged with the direct supervision of the operation of any facility must be certified by the division as having such qualifications after a review of the types, properties, and volume of hazardous waste to be treated or disposed of at the facility.

(C) The division may require the recertification of supervisory personnel when there is any significant change in the types or properties of hazardous waste being treated or disposed of in any facility;

(4) Evidence of an appropriate preventive maintenance program, spill prevention plan, safety procedures, and contingency plans which have been developed in consultation with the fire department having jurisdiction and by the mayor or city manager of the municipality or by the county judge of the county in which the facility is to be located;

(5) Evidence that the location of the facility is consistent with the siting criteria established by the division as provided in § 8-7-209(a)(3). The provisions of this subdivision (5) shall not apply to a treatment facility which began operation prior to the date of enactment of this act and which has an existing operating permit from the Arkansas Department of Environmental Quality, now the Division of Environmental Quality, or to any subsequent modifications to such treatment facility, provided that the owner of the treatment facility can demonstrate that the modifications do not materially increase the degree of hazards associated with the treatment facility; and

(6) Evidence of such forms of assurance, including full fee ownership of lands, and all mineral rights thereto, to ensure that the owner of any hazardous waste landfill has the legal authority to commit the hazardous waste landfill to perpetual security.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 2019, No. 910, § 2735.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language; substituted “division” for “de-

partment” throughout the section; and in (5), substituted “division” for the first occurrence of “department”, and substituted “Arkansas Department of Environmental Quality, now the Division of Environmental Quality” for the second occurrence of “department”.

8-7-220. Permits — Duration — Renewal.

(a) Permits shall be issued for a period not to exceed ten (10) years. However, land disposal permits shall be reviewed five (5) years from the date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable laws and rules.

(b) Permits shall be subject to renewal by the Division of Environmental Quality upon a showing that the facility has been operated in accordance with the terms of the permit, the rules applicable to such facility, and in compliance with all other provisions of this subchapter.

(c) Nothing in this section shall preclude a permit from being reviewed and modified at any time during its term.

History. Acts 1979, No. 406, § 5; 1985, No. 920, § 1; A.S.A. 1947, § 82-4205; Acts 1999, No. 1164, § 92; 2019, No. 315, § 617; 2019, No. 910, § 2736.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regula-

tions” in (a) and deleted “and regulations” following “rules” in (b).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (b).

8-7-221. Permits — Revocation.

Any permit issued under §§ 8-7-215 — 8-7-220 shall be subject to revocation for failure of the permittee to comply with the terms and conditions of the permit, the rules of the Division of Environmental Quality applicable thereto, or the provisions of this subchapter.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 2019, No. 315, § 618; 2019, No. 910, § 2737.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules”.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-7-222. Permits — Hearing upon denial, revocation, or modification.

Any person who is denied a permit by the Director of the Division of Environmental Quality or who has such permit revoked or modified shall be afforded an opportunity for a hearing by the Arkansas Pollution Control and Ecology Commission in connection therewith upon written application made within thirty (30) days after service of notice of the denial, revocation, or modification.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 2019, No. 910, § 2738.

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

Amendments. The 2019 amendment

8-7-223. Location of landfill.

No hazardous waste landfill disposal facility off the site of generation shall be located within one-half ($\frac{1}{2}$) mile of any occupied dwelling unless the applicant shall affirmatively demonstrate and the Division of Environmental Quality shall specifically find that, because of the nature and amounts of the materials to be placed in such hazardous waste landfill disposal facility, a lesser distance will provide adequate margins of safety even under abnormal operating conditions.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 2019, No. 910, § 2739.

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

Amendments. The 2019 amendment

8-7-224. Rules for transporting hazardous waste.

(a)(1) Following notice and public hearing, the Arkansas Department of Transportation, in consultation with the Division of Environmental Quality, shall issue rules for the transportation of hazardous waste.

(2) The rules shall be consistent with applicable rules and regulations issued by the United States Department of Transportation and with any rules and standards issued by the division under this subchapter.

(b) The provisions of this section shall apply equally to those persons transporting hazardous waste generated by others and to those transporting hazardous waste they have generated themselves, or combinations thereof.

History. Acts 1979, No. 406, § 7; A.S.A. 1947, § 82-4207; Acts 2017, No. 707, § 11; 2019, No. 315, § 619; 2019, No. 910, § 2740.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (a)(1) and following the

first occurrence of “rules” in (a)(2); and deleted “regulations” following the last occurrence of “rules” in (a)(2).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1) and (a)(2).

8-7-225. Records and examinations.

(a) The owner or operator of any hazardous waste management facility or site shall notify the Division of Environmental Quality as to hazardous waste management activities in accordance with the requirements of this subchapter and rules, permits, and orders issued under this subchapter, and shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, take such samples, perform such tests, and provide such other information to the division as the Director of the Division of Environmental Quality may reasonably require.

(b) The division or any authorized employee or agent thereof may examine and copy any books, papers, records, or memoranda pertaining to the operation of the facility or site.

(c) The division or any authorized employee or agent thereof may enter upon any public or private property for the purpose of obtaining information or conducting surveys or investigations necessary or appropriate for the purposes of this subchapter.

(d)(1)(A) Any records, reports, or information obtained under this subchapter and any permits, permit applications, and related documentation shall be available to the public for inspection and copying.

(B) Upon a showing satisfactory to the director that the records, reports, permits, documentation, information, or any part thereof would, if made public, divulge methods or processes entitled to protection as trade secrets, the director shall consider, treat, and protect the records, reports, or information as confidential.

(2)(A) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing claim of confidentiality to other officers or employees of the state or of the United States if the owner or operator of the facility to which the information pertains is informed of the transmittal and if the information has been acquired by the division under the provisions of this subchapter.

(B) The provisions of subdivision (d)(2)(A) of this section shall not be construed to limit the division’s authority to release confidential information during emergency situations.

(3) Any violation of this subsection is a Class A misdemeanor.

History. Acts 1979, No. 406, § 11; 1983, No. 809, § 1; A.S.A. 1947, § 82-4211; Acts 1989, No. 643, § 8; 2019, No.

315, § 620; 2019, No. 693, § 19; 2019, No. 910, § 2741.

Amendments. The 2019 amendment

by No. 315 substituted “rules” for “regulations” in (a).

The 2019 amendment by No. 693 substituted “is a Class A” for “shall be unlawful and constitute a” in (d)(3).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” and “department” for “division” throughout the section.

8-7-226. Fees — Fund established.

(a) The Arkansas Pollution Control and Ecology Commission shall have authority to establish by rule a schedule of fees to recover the costs of processing permit applications and permit renewal proceedings, on-site inspections and monitoring, the certification of personnel to operate hazardous waste treatment, storage, or disposal facilities, and other activities of Division of Environmental Quality personnel which are reasonably necessary to assure that generators and transporters of hazardous waste and hazardous waste management facilities are complying with the provisions of this subchapter and which reasonably should be borne by the transporter, generator, or owner or operator of the hazardous waste management facility.

(b) All fees collected pursuant to this section shall be dedicated to enabling the division to receive authorization to administer a hazardous waste management program in Arkansas pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984.

(c) The Hazardous Waste Permit Fund is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State. All fees collected under the provisions of this section shall be deposited into this fund.

(d) The commission is hereby authorized to promulgate such rules as are necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe such fees, rates, tolls, or charges for the services delivered by the division or its successor in such manner as may be necessary to support the programs of the division as directed by the Governor and the General Assembly.

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 9; 1991, No. 1235, § 1; 1993, No. 1254, §§ 3, 5; 1997, No. 1219, § 9; 1999, No. 1164, § 93; 2019, No. 315, §§ 621, 622; 2019, No. 910, § 2742.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regula-

tion” in (a); and deleted “and regulations” following “rules” in (d).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (b) and twice in (d).

8-7-227. Corrective action at permitted facilities and interim status facilities.

(a)(1) Any permit issued under this subchapter for any hazardous waste treatment, storage, or disposal facility shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at the hazardous waste treatment, storage, or

disposal facility seeking the permit under this subchapter regardless of the time at which waste was placed in the unit.

- (2) The corrective action component of the permit shall contain:
 - (A) Schedules of compliance for the corrective action when the corrective action cannot be completed prior to issuance of the permit; and
 - (B) Assurances of financial responsibility for completing the corrective action.
- (3) The corrective action component of the permit shall also require that corrective action be taken beyond the hazardous waste treatment, storage, or disposal facility boundary when necessary to protect human health and the environment unless the owner or operator of the hazardous waste treatment, storage, or disposal facility concerned demonstrates to the satisfaction of the Director of the Division of Environmental Quality that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the action.

(b)(1) Whenever the director determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under interim operating authority pursuant to this subchapter, the director may:

- (A) Issue an order requiring corrective action or such other response measure as the director deems necessary to protect human health or the environment; or
- (B) Commence a civil action in the circuit court in the county in which the facility is located for appropriate relief, including a temporary or permanent injunction.

- (2)(A) Any order issued under this subsection:
 - (i) Shall state with reasonable specificity the nature of the required corrective action or other response measure;
 - (ii) Shall specify a time for compliance; and
 - (iii) May include a suspension or revocation of the interim authority to operate under this subchapter.
- (B) If any person named in an order issued under this section fails to comply with the order, the director may assess a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) for each day of noncompliance with the order.

History. Acts 2005, No. 1166, § 1; substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(3).
Amendments. The 2019 amendment

SUBCHAPTER 3 — ARKANSAS RESOURCE RECLAMATION ACT OF 1979

SECTION.
8-7-302. Legislative findings.
8-7-304. Definitions.
8-7-307. Unlawful actions — Acts or omissions of third parties.

SECTION.
8-7-308. Powers and duties generally.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-7-302. Legislative findings.

The General Assembly finds and it is declared that:

(1) The disposal of hazardous waste, although currently necessary for certain forms of hazardous waste, represents an inefficient use of natural resources and may present long-term threats to the environment and to the public health and safety;

(2) Technically and economically feasible treatment methods are becoming increasingly available and offer the advantages of complete destruction of hazardous waste or the recovery and reclamation of some, if not all, constituents of hazardous waste;

(3) In addition to the recovery or reclamation of natural resources, treatment of hazardous waste reduces the volume of hazardous waste which must be disposed of and thereby reduces the associated threats to the environment and to the public health and safety;

(4) Interstate cooperation is necessary to assure that the volume of hazardous waste which must be disposed of within the state is reduced through a comprehensive program which encourages and, when appropriate, requires the treatment of hazardous waste; and

(5) The Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., authorizes the Division of Environmental Quality to encourage the development of interstate agreements for the management of hazardous waste and to enter into such interstate agreements, with the concurrence of the Governor.

History. Acts 1979, No. 1098, § 2; A.S.A. 1947, § 82-4218; Acts 2019, No. 910, § 2744.

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (5).

Amendments. The 2019 amendment

8-7-304. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(2) [Repealed.]

(3) [Repealed.]

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water in whatever manner so that the hazardous waste or any constituent thereof might or might not enter the environment or be emitted into the air or discharged into any water, including groundwaters;

(5) "Facility" means any land and appurtenances thereon and thereto used for the treatment, storage, or disposal of hazardous waste;

(6) "Generation" means the act or process of producing waste materials;

(7)(A) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may, in the judgment of the Division of Environmental Quality:

(i) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise improperly managed.

(B) "Hazardous waste" includes, but is not limited to, those which are radioactive, toxic, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means;

(8) "Hazardous waste management" means the systematic control of the generation, collection, source separation, storage, transportation, processing, recovery, disposal, and treatment of hazardous waste;

(9) "Manifest" means the form used for identifying the quantity and composition and the origin, routing, and destination of hazardous waste during its transport;

(10) "Owners, operators, or other responsible parties" means and includes:

(A) Any person owning or operating a site or facility; or

(B) In the case of any inactive or abandoned facility or site, any person who owned, operated, or otherwise controlled the activities at the site or facility during the time that the site or facility was used to manage hazardous wastes;

(11) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized;

(12) "Site" means any real property located within the boundaries of the State of Arkansas contemplated or later acquired for the purpose of, but not limited to, landfills or other facilities to be used for treatment, storage, disposal, or generation of hazardous waste;

(13)(A) "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(B) However, storage by means of burial shall be deemed to constitute disposal within the meaning of this subchapter;

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal;

(15) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such hazardous waste or so as to render such hazardous waste less hazardous, safer for transport, amenable to recovery, amenable to storage, amenable to disposal, or reduced in volume; and

(16) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated.

History. Acts 1979, No. 1098, § 4; 1985, No. 922, § 2; A.S.A. 1947, § 82-4220; Acts 1999, No. 1164, § 94; 2019, No. 910, §§ 2745, 2746.

repealed (2) and (3); and substituted "Division of Environmental Quality" for "department" in the introductory language of (7)(A).

Amendments. The 2019 amendment

8-7-307. Unlawful actions — Acts or omissions of third parties.

(a) It is unlawful for a person to:

(1) Violate a provision of this subchapter or of any rule, permit, or order issued under this subchapter;

(2) Transport hazardous waste into or out of the state, except as provided by rule established by the Division of Environmental Quality pursuant to the provisions of this subchapter; or

(3) Dispose of hazardous waste in the state except as provided by rules established by the division pursuant to this subchapter.

(b)(1)(A) A person who violates this section upon conviction is guilty of an unclassified misdemeanor and shall be sentenced to not more than one (1) year in the county jail or a fine of not more than ten thousand dollars (\$10,000), or both.

(B) Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) A person who violates this section or the rules issued under this subchapter, or who violates any condition of a permit issued under this subchapter, may be assessed a civil penalty by the Arkansas Pollution Control and Ecology Commission under administrative procedures and civil penalty rules of the commission.

(B) The civil penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation.

(C) Each day of a continuing violation may be considered a separate violation for purposes of civil penalty assessments.

(D) However, a civil penalty assessment shall not be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation under §§ 8-4-218, 8-4-219, and 8-4-221.

(c) A person is not liable for violating a provision of this subchapter or of any rule, permit, or order issued under this subchapter if the violation was caused solely by the acts or omissions of a third party.

History. Acts 1979, No. 1098, § 6; 1985, No. 922, § 4; A.S.A. 1947, § 82-4222; Acts 1989, No. 260, § 6; 2015, No. 1264, § 8; 2019, No. 315, §§ 623-625; 2019, No. 910, § 2747.

Amendments. The 2019 amendment by No. 315 deleted “regulation” following “rule” in (a)(1) and (c); substituted “rule”

for “regulations” in (a)(2); and substituted “rules” for “regulations” in (a)(3) and twice in (b)(2)(A).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(2); and substituted “division” for “department” in (a)(3).

8-7-308. Powers and duties generally.

The Division of Environmental Quality shall have the following powers and duties:

(1) To enter into such agreements or compacts between one (1) or more states or with the United States Government as may be necessary and appropriate to effectuate a program consistent with the purposes of this subchapter if these agreements or compacts first receive the approval of the Governor;

(2) To adopt such rules as may be necessary and appropriate to enforce within the state the terms of any interstate agreement or compact developed pursuant to the provisions of this subchapter;

(3) To promote the purposes of this subchapter and to effectuate and implement interstate agreements by imposing reasonable conditions on permits issued under this subchapter and the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the rules promulgated under this subchapter and the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.;

(4) To prohibit, by rule or by condition of permit, the disposal of any hazardous waste within the state unless the owner or custodian of the hazardous waste can demonstrate to the reasonable satisfaction of the Director of the Division of Environmental Quality that it is technically or economically infeasible for the hazardous waste to be treated;

(5) To issue, continue in effect, revoke, modify, or deny, under such terms as the division or the General Assembly may prescribe, permits for the establishment, construction, operation, or maintenance of hazardous waste treatment or disposal facilities;

(6) To adopt and enforce rules which would require the owners, operators, or other responsible parties of inactive or abandoned disposal sites to undertake such actions as are reasonable to prevent environmental contamination;

(7) To receive federal and private funds for the purpose of securing or reclaiming abandoned hazardous waste disposal sites in an environmentally safe manner; and

(8) To encourage and to participate in studies, projects, and agreements for the purpose of identifying and evaluating improvements in hazardous waste treatment and disposal techniques.

History. Acts 1979, No. 1098, § 5; 1985, No. 922, § 3; A.S.A. 1947, § 82-4221; Acts 2019, No. 315, §§ 626, 627; 2019, No. 910, §§ 2748, 2749.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (2), (3), and (6); and substituted “rule” for “regulation” in (4).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language and in (4); and substituted “division” for “department” in (5).

SUBCHAPTER 5 — REMEDIAL ACTION TRUST FUND ACT

SECTION.

- 8-7-502. Legislative intent — Purposes.
- 8-7-503. Definitions.
- 8-7-504. Penalties.
- 8-7-505. Unlawful acts.
- 8-7-506. Rules — Administrative procedure.
- 8-7-508. Remedial and removal authority of the division.
- 8-7-509. Hazardous Substance Remedial Action Trust Fund.
- 8-7-510. Federal actions or compensation not to be duplicated.
- 8-7-511. Furnishing of information.
- 8-7-512. Liability for costs — Immunity from liability.

SECTION.

- 8-7-514. Recovery of expenditures generally.
- 8-7-516. Liens for expenditures and value of improvements.
- 8-7-517. Punitive damages.
- 8-7-518. Fees on the generation of hazardous waste.
- 8-7-519. Appeals.
- 8-7-520. Contribution.
- 8-7-521. Site access for remedial or removal action.
- 8-7-524. Recycling transactions — Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-7-502. Legislative intent — Purposes.

(a) It is the intent of the General Assembly to provide the state with the necessary authority and funds to investigate, control, prevent, abate, treat, or contain releases of hazardous substances necessary to protect the public health and the environment, including funds required to assure payment of the state’s participation in response actions

pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, and to encourage the reduction of hazardous waste generation.

(b) The purpose of this subchapter is to encourage privately funded remedial action and to clarify that persons who have undertaken remedial action at a hazardous substance site in response to an action initiated by the Division of Environmental Quality pursuant to § 8-7-508 may obtain contribution from any other person who is liable for remediation of the hazardous substance site.

(c) A further purpose of this subchapter is to clarify the General Assembly's intent to provide the division with the necessary funds for remedial action at a hazardous substance site, recognizing that both public and private funds must be expended to implement remedial action at the hazardous substance sites which exist in this state. Costs and expenses for remedial action, whether expended by the division or by any person liable for the hazardous substance site, are legal damages to persons liable to the state and to persons liable to any other person for contribution, whether the liability arises by voluntary compliance with this subchapter pursuant to an order from or settlement with the division, or by suit for injunctive relief, declaratory judgment, contribution, damages, or restitution, and whether the suit is brought by the state or by any party authorized to bring a suit for relief under this subchapter.

(d) The General Assembly expressly intends that the provisions of this subchapter shall apply retroactively.

(e) A further purpose of this act is to:

(1) Provide the state with the authority necessary to protect the public's health and safety and the environment from releases or threatened releases of hazardous substances;

(2) Provide emergency response capabilities necessary to promptly contain, control, or remove hazardous substances resulting from spills or accidental releases; and

(3)(A) Provide the state with the authority necessary to fund site assessments at any one (1) or more of the following:

(i) Abandoned industrial, commercial, and agricultural sites or residential properties as stated in § 8-7-1101 et seq. for written requests from quasi-governmental agencies, county government, school districts, and planning and development districts if the persons do not hold title at the time of the written requests; or

(ii) Potentially contaminated sites when a letter of intent is signed and available federal funds are exhausted.

(B) The provisions concerning site assessments under §§ 8-7-504(a) and (b), 8-7-505, 8-7-508, 8-7-509(e) and (f), and 8-7-516 shall not apply under this subdivision (e)(3).

History. Acts 1985, No. 479, § 2; A.S.A. 1947, § 82-4713; Acts 1989, No. 441, § 1; 2005, No. 1824, § 2; 2017, No. 1073, § 1; 2019, No. 910, § 2750.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b); and substi-

tuted "division" for "department" throughout (c).

8-7-503. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) [Repealed.]

(3) [Repealed.]

(4) "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510;

(5) "Fund" means the Hazardous Substance Remedial Action Trust Fund created by this subchapter;

(6) "Hazardous substance" means:

(A) As of March 21, 1985, any:

(i) Substance designated pursuant to § 311(b)(2)(A) of the Federal Water Pollution Control Act, 33 U.S.C. § 1321(b)(2)(A);

(ii) Element, compound, mixture, solution, or substance designated pursuant to § 102 of Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9602;

(iii) Hazardous waste, including polychlorinated biphenyls, as defined by the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the rules promulgated thereunder;

(iv) Toxic pollutant listed under § 307(a) of the Federal Water Pollution Control Act, 33 U.S.C. § 1317(a);

(v) Hazardous air pollutant listed under § 112 of the Clean Air Act, 42 U.S.C. § 7412; and

(vi) Hazardous chemical substance or mixture regulated under § 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606; and

(B) Any other substance or pollutant designated by rules of the commission promulgated under this subchapter;

(7) "Hazardous substance sites" means any sites or facilities where hazardous substances have been disposed of or from which there is a release or threatened release of hazardous substances;

(8) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, state or federal government or agency, quasi-governmental agency, county government, school district, and planning and development district, or any other legal entity, however organized;

(9) "Releases of hazardous substances" means any spilling, leaking, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of hazardous substances into the environment;

(10) "Remedial action" means action necessary to effect permanent control, abatement, prevention, treatment, or containment of releases and threatened releases, including the removal of hazardous substances from the environment when removal is necessary to protect public health and the environment. Such actions are intended to

include investigations designed to determine the need for and scope of remedial action and such planning, legal, fiscal, economic, engineering, geological, technical, or architectural studies as necessary to plan and direct remedial actions, to recover the cost thereof, and to enforce the provisions of this subchapter;

(11) "Removal action" means:

(A) The necessary cleanup or removal of a released hazardous substance from the environment;

(B) Necessary actions taken in the event of a threatened release of a hazardous substance into the environment;

(C) Actions necessary to monitor, test, analyze, and evaluate a release or threatened release of a hazardous substance;

(D) Disposal or processing of removed material; or

(E) Other actions necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment that may otherwise result from a release or threatened release;

(12) "Threatened release" means, for the purpose of this subchapter, any situation in which a sudden or nonsudden release of hazardous substances can be reasonably expected unless prevented by change of operation or installation or construction of containment or treatment devices or by removal action or other remedial action; and

(13) "Treatment", "storage", "disposal", "generation", and "hazardous waste" mean the same as provided in § 8-7-203 and the rules promulgated pursuant to the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

History. Acts 1985, No. 479, § 3; A.S.A. 1947, § 82-4714; Acts 1995, No. 125, § 2; 1997, No. 1042, § 12(a); 1999, No. 1164, §§ 98, 99; 2005, No. 1824, § 8; 2017, No. 1073, § 2; 2019, No. 315, §§ 628-630; 2019, No. 910, § 2751.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (6)(A)(iii), (6)(B), and (13).

The 2019 amendment by No. 910 repealed (2) and (3).

8-7-504. Penalties.

(a)(1) Any person who commits any unlawful act under this subchapter shall be guilty of a misdemeanor and upon conviction shall be subject to imprisonment for not more than one (1) year or a fine of not more than ten thousand dollars (\$10,000) or to both a fine and imprisonment.

(2) Each day or part of a day during which such violation is continued or repeated shall constitute a separate offense.

(b) Any person who violates any provision of this subchapter or commits any unlawful act under this subchapter shall be subject to:

(1) A civil penalty in such amount as the Director of the Division of Environmental Quality shall find appropriate, not to exceed twenty-five thousand dollars (\$25,000) per day of the violation;

(2) The payment of any expenses reasonably incurred by the state in removing, correcting, or terminating any adverse effects resulting

therefrom, including the cost of the investigation, inspection, or survey establishing the violation or unlawful act; and

(3) The payment to the state of reasonable compensation of any actual damage resulting therefrom.

(c) One-half (½) of the civil penalties provided for in subdivision (b)(1) of this section, but not to exceed five hundred thousand dollars (\$500,000) in any one (1) calendar year and not to exceed four million dollars (\$4,000,000) in the aggregate, may be deposited into the Remedial Action Account in the Construction Assistance Revolving Loan Fund established pursuant to § 15-5-901, if so authorized by the director, and such moneys shall not be deposited into or deemed to be a part of the State Treasury for the purposes of Arkansas Constitution, Article 5, § 29, Arkansas Constitution, Article 16, § 12, Arkansas Constitution, Amendment 20, or any other constitutional or statutory provisions.

History. Acts 1985, No. 479, § 11; A.S.A. 1947, § 82-4722; Acts 1997, No. 1042, § 3; 2019, No. 910, § 2752.

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b)(1).

Amendments. The 2019 amendment

8-7-505. Unlawful acts.

It shall be unlawful for any person:

(1) To violate any provision of this subchapter or any rule adopted under this subchapter;

(2) To knowingly make a false statement, representation, or certification in any report or other document filed or required by this subchapter or the rules adopted pursuant to this subchapter; or

(3) To violate any order issued by the Division of Environmental Quality under this subchapter or any provision of such an order.

History. Acts 1985, No. 479, § 10; A.S.A. 1947, § 82-4721; Acts 2019, No. 315, § 631; 2019, No. 910, § 2753.

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (3).

Amendments. The 2019 amendment by No. 315 deleted "or regulation" following "rule" in (1); and deleted "and regulations" following "rules" in (2).

8-7-506. Rules — Administrative procedure.

The Arkansas Pollution Control and Ecology Commission shall adopt rules under this subchapter necessary to implement or effectuate the purposes and intent of this subchapter, including, but not limited to, rules affording any persons aggrieved by any order issued pursuant to this subchapter an opportunity for a hearing thereon and commission review of the action.

History. Acts 1985, No. 479, § 13; A.S.A. 1947, § 82-4724; Acts 2019, No. 315, § 632.

Amendments. The 2019 amendment

substituted "Rules" for "Regulations" in the section heading and twice in the section.

8-7-508. Remedial and removal authority of the division.

(a)(1) Upon finding that a hazardous substance site exists or may exist, the Division of Environmental Quality, upon reasonable notice and after opportunity for hearing, may issue an order to any person liable for the site under § 8-7-512 if that person has caused or contributed to the release or threatened release of hazardous substances at the hazardous substance site. This order shall require that such remedial actions be taken as are necessary to investigate, control, prevent, abate, treat, or contain any releases or threatened releases of hazardous substances from the hazardous substance site.

(2) The fact that such a hazardous substance site is or is not listed by the Arkansas Pollution Control and Ecology Commission pursuant to § 8-7-509(f) shall in no manner limit the authority of the division under this subchapter.

(b) The Director of the Division of Environmental Quality or any employee or authorized agent of the division may enter upon any private or public property for the purpose of collecting information under this subchapter and for initiating and implementing remedial actions.

(c) The director is authorized to initiate and implement remedial actions under this subchapter pursuant to the provisions of § 8-7-509.

(d) In taking removal action or remedial actions pursuant to this subchapter, the division or any contractor of the division under this section shall not be required to obtain any state or local permit for the portion of any removal action or remedial action conducted pursuant to this subchapter entirely on site when the removal action or remedial action is otherwise carried out in compliance with the rules of the division.

(e) The director is authorized to initiate and implement removal actions under this subchapter whenever there is a release or a threatened release of hazardous substances which may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment.

(f) Whenever the director has reason to believe that a release or threatened release of hazardous substances may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment, the director and the employees and the authorized representatives of the division shall have the right to enter upon any affected private or public property for the purpose of collecting information and for initiating and implementing appropriate removal or remedial actions.

(g) Removal actions are not authorized when the director has reasonable assurance that the person liable for a release or threatened release has committed to and is capable of initiating corrective and

removal action in a timely manner and that the actions will achieve results equivalent to the results from removal action authorized in this section.

(h) Upon finding that a release or a threatened release of hazardous substances may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment, the director, without notice or hearing, may issue an order reciting the existence of such an imminent hazard and substantial endangerment and requiring that such removal actions be taken as he or she determines necessary to protect the health and safety of any affected or threatened persons or the environment and to otherwise meet the emergency.

(i) The order of the director issued under subsection (h) of this section may include, but is not limited to, requiring any person responsible in whole or in part for the release or threatened release or any person in total or partial control of the site, facility, or transport vehicle from which the release or threatened release emanates, if that person has caused or contributed to the release or threatened release, to take such steps as are necessary to protect the public health and safety and the environment.

(j) The director is not authorized to expend in excess of two hundred fifty thousand dollars (\$250,000) on any single removal action without approval of the commission.

(k)(1) The orders issued under subsection (h) of this section may be issued verbally or in writing.

(2) If originally issued verbally, a written order shall be issued by the director confirming the verbal order as soon as it is reasonably possible to do so.

(l) Any person to whom an order issued under subsection (h) of this section is directed shall comply with the order immediately but, upon written request to the commission within ten (10) days of the order's being issued by the director, shall be afforded a hearing and administrative review of the order within ten (10) days after filing the written request.

(m) A person shall not be deemed to be liable for, responsible for, or to have caused or contributed to the release or threatened release of hazardous substances pursuant to any provision of this subchapter if the person merely provides financing or loans to another person or obtains title to property through foreclosure or through conveyance of property in total or partial satisfaction of a mortgage or other security interest in property.

History. Acts 1985, No. 479, § 6; A.S.A. 1947, § 82-4717; Acts 1987, No. 761, § 3; 1989, No. 260, § 4; 2005, No. 1824, § 9; 2019, No. 315, § 633; 2019, No. 910, §§ 2754-2757.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (d).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(1) and (b); and substituted "division" for "department" throughout the section.

8-7-509. Hazardous Substance Remedial Action Trust Fund.

(a) The Hazardous Substance Remedial Action Trust Fund is created.

(b) The Hazardous Substance Remedial Action Trust Fund will be administered by the Director of the Division of Environmental Quality, who shall authorize expenditures from the Hazardous Substance Remedial Action Trust Fund.

(c)(1) The Hazardous Substance Remedial Action Trust Fund shall consist of all moneys received as penalties under §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-313, 8-6-201 — 8-6-214, 8-7-201 — 8-7-226, 8-7-504, and § 20-27-1001 et seq.

(2) In addition to all moneys appropriated by the General Assembly to the fund, there shall be deposited into the fund:

(A) Any moneys received by the state as a gift or donation to the fund;

(B) All interest earned upon moneys deposited into the fund;

(C) All fees assessed under § 8-7-518;

(D) All punitive damages collected pursuant to § 8-7-517; and

(E) Any other moneys legally designated for the fund.

(3) In addition, there is authorized to be deposited into the fund all moneys recovered pursuant to § 8-7-514 and all moneys received as penalties pursuant to § 8-7-504.

(d)(1) Ten percent (10%) of the moneys collected for the Hazardous Substance Remedial Action Trust Fund after July 1, 1991, shall be deposited into the Environmental Education Fund. Total deposit of funds shall not exceed two hundred seventy-five thousand dollars (\$275,000) per fiscal year.

(2)(A) Ten percent (10%) of the moneys collected for the Hazardous Substance Remedial Action Trust Fund after July 1, 2017, may be used for conducting site assessments of potentially contaminated sites when a letter of intent has been signed and available federal funds are exhausted in accordance with § 8-7-1101 et seq.

(B) This amount shall not exceed five hundred thousand dollars (\$500,000) per fiscal year.

(3) The remaining moneys in the Hazardous Substance Remedial Action Trust Fund may be expended by the director as authorized by this subsection and subsection (e) of this section:

(A) For the costs and expenses reasonably necessary for the administration of this subchapter by the Division of Environmental Quality;

(B) For the state share mandated by § 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9604(c)(3); and

(C) To provide for the investigation, identification, assessment, containment, abatement, treatment, or control, including monitoring and maintenance, of hazardous substance sites within the state. The director may enter into the contracts and use the funds for those

purposes directly associated with identification, investigation, containment, abatement, treatment, or control, including monitoring and maintenance, prescribed above, including:

- (i) Hiring of personnel;
- (ii) Purchasing, leasing, or renting of equipment; and
- (iii) Other necessary expenses related to the operation and implementation of this subchapter.

(e) The moneys in the Hazardous Substance Remedial Action Trust Fund may be expended by the director for removal actions, including:

- (1) The purchase of any commodities or services necessary in taking removal actions in connection with a release or threatened release; and
- (2) Reimbursement of all costs incurred by the division in taking removal actions in connection with a release or threatened release.

(f)(1) No expenditures from the Hazardous Substance Remedial Action Trust Fund, as authorized by subdivisions (d)(3)(B) and (C) of this section, shall be made prior to the approval by the Arkansas Pollution Control and Ecology Commission of a prioritized listing of hazardous substance sites at which remedial actions are authorized through the use of Hazardous Substance Remedial Action Trust Fund moneys. This listing shall be revised annually by the division and submitted to the commission for approval after public notice and opportunity for hearing.

(2) Upon a showing that a release of a hazardous substance at a hazardous substance site exists and will continue without expeditious remedial action, the commission may list the site on the prioritized listing pursuant to the procedures set out in § 8-4-202(e) prior to public notice and thereby authorize the director to expend funds pursuant to subdivision (d)(3)(C) of this section. Such an emergency listing need not be supported by a factual showing of irreparable harm or imminent and substantial endangerment.

(g)(1) Notwithstanding the provisions of §§ 19-6-108 and 19-6-601, grants to the state under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, Pub. L. No. 96-510, as each may be amended from time to time, and otherwise from the United States Environmental Protection Agency received by the Treasurer of State from the United States Government are declared to be cash funds restricted in their use and dedicated and are to be used solely as authorized in this subchapter and the Arkansas Brownfield Revolving Loan Fund Act, § 15-5-1501 et seq.

(2) When received by the Treasurer of State, the cash funds shall not be deposited into or deemed to be a part of the State Treasury for the purposes of Arkansas Constitution, Article 5, § 29, Arkansas Constitution, Article 16, § 12, Arkansas Constitution, Amendment 20, or any other constitutional or statutory provisions.

(3) The Treasurer of State shall pay the cash funds to the Arkansas Development Finance Authority for deposit into the Brownfield Revolving Loan Fund established pursuant to the Arkansas Brownfield

Revolving Loan Fund Act, § 15-5-1501 et seq., to be used for the purposes authorized by this subchapter and the Arkansas Brownfield Revolving Loan Fund Act, § 15-5-1501 et seq.

(4) Such federal grants transferred directly to the authority are declared to be cash funds restricted in their use and dedicated and to be used solely as authorized in this subchapter and the Arkansas Brownfield Revolving Loan Fund Act, § 15-5-1501 et seq.

History. Acts 1985, No. 479, §§ 4, 5; A.S.A. 1947, §§ 82-4715, 82-4716; Acts 1991, No. 746, § 2; 1991, No. 786, § 9; 1997, No. 1042, §§ 4, 5; 1999, No. 45, § 1; 2005, No. 1824, § 10; 2011, No. 1011, § 3; 2017, No. 1073, § 3; 2019, No. 693, § 20; 2019, No. 910, §§ 2758-2761.

Amendments. The 2019 amendment by No. 693 deleted former (c)(1) and (c)(3)(D) and redesignated the remaining subdivisions in (c) accordingly; deleted

“Beginning July 1, 2005” from the beginning of present (c)(1); and substituted “fund” for “Hazardous Substance Remedial Action Trust Fund” throughout (c).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (b) and (d)(3)(A); and substituted “division” for “department” in (e)(2) and (f)(1).

8-7-510. Federal actions or compensation not to be duplicated.

No actions taken pursuant to this subchapter by the Division of Environmental Quality shall duplicate federal actions, and no claims for the costs of response or other claims compensable under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, shall be compensable under this subchapter.

History. Acts 1985, No. 479, § 5; A.S.A. 1947, § 82-4716; Acts 2019, No. 910, § 2762.

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

Amendments. The 2019 amendment

8-7-511. Furnishing of information.

(a) For purposes of assisting in determining the need for remedial action in connection with a release or threat of release of hazardous substances under this subchapter or for enforcing the provisions of this subchapter, any person who stores, treats, or disposes of hazardous substances, or, if necessary to ascertain facts not available at the site or facility where the hazardous substances are stored, treated, or disposed of, any person who generates, transports, otherwise handles, or has handled hazardous substances shall, upon request of any officer or employee of the Division of Environmental Quality, furnish information relating to the hazardous substance and permit the person at all reasonable times to have access to and copy all records relating to the hazardous substances and to inspect and obtain samples of any such hazardous substances or other materials.

(b) However, any information which would constitute a trade secret under § 4-75-601 et seq., obtained by the Department of Energy and Environment, the Secretary of the Department of Energy and Environ-

ment, the division, or any employees of the Department of Energy and Environment or the division, in the administration of this subchapter, except emission data, shall be kept confidential.

(c) Any violation of this section is a Class A misdemeanor.

History. Acts 1985, No. 479, § 12; A.S.A. 1947, § 82-4723; Acts 2019, No. 693, § 21; 2019, No. 910, § 2763.

Amendments. The 2019 amendment by No. 693 substituted “is a Class A” for “shall be unlawful and constitute a” in (c).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environ-

mental Quality” in (a); and, in (b), substituted “Department of Energy and Environment, the Secretary of the Department of Energy and Environment, the division, or any employees of the Department of Energy and Environment or the division” for “department or its employees”.

8-7-512. Liability for costs — Immunity from liability.

(a) Any of the following shall be liable to the state for all costs of remedial action or removal actions under this subchapter:

- (1) The owner and operator of a facility;
- (2) Any person who, at the time of disposal of any hazardous substance, owned or operated a hazardous substance site;
- (3) Any generator of hazardous substances who caused such a hazardous substance to be disposed of at a hazardous substance site or who causes a release or threatened release of the hazardous substances; or
- (4) Any transporter of hazardous substances who causes a release or threatened release of the hazardous substances or who selected a hazardous substance site for disposal of the hazardous substances.

(b)(1) No person shall be liable under this subchapter for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice at the direction of the Department of Energy and Environment, the Secretary of the Department of Energy and Environment, or the Division of Environmental Quality, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat of a release of a hazardous substance.

(2)(A) This subsection shall not preclude liability for damages as a result of gross negligence or intentional misconduct on the part of the person, nor shall this subsection preclude liability for damages and costs of remedial action or removal action of any person liable for such damages and costs pursuant to subsection (a) of this section.

(B) For the purposes of subdivision (b)(2)(A) of this section, reckless, willful, or wanton misconduct shall constitute gross negligence.

(c)(1) A person taking remedial action or removal action under this subchapter as a contractor for the department or division shall not be liable under this subchapter or under any other state law to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to

property, or economic loss resulting from a release or threatened release of hazardous substances.

(2) However, the provisions of this subsection shall not apply in case of a release that is caused by the conduct of the person taking remedial action or removal action that is negligent or grossly negligent or which constitutes intentional misconduct.

(d) A state employee or an employee of a political subdivision who provides services relating to remedial action or removal action while acting within the scope of his or her authority as a governmental employee shall have the same exemption from liability, subject to the other provisions of this section, as is provided to the removal action or remediation action contractor under subsection (c) of this section.

(e)(1) Nothing in subsection (c) or subsection (d) of this section shall affect the liability of any person under warranty under state or common law.

(2) Nothing in this subsection shall affect the liability of an employer taking remedial action or removal action to any employee of any such employer under any provision of law, including any provision of any law relating to workers' compensation.

History. Acts 1985, No. 479, § 8; A.S.A. 1947, § 82-4719; Acts 1987, No. 761, § 4; 1989, No. 441, § 2; 2005, No. 1824, § 3; 2019, No. 910, §§ 2764, 2765.

Amendments. The 2019 amendment substituted "Department of Energy and

Environment, the Secretary of the Department of Energy and Environment, or the Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b)(1); and inserted "or division" in (c)(1).

8-7-514. Recovery of expenditures generally.

(a) After an expenditure from the Hazardous Substance Remedial Action Trust Fund for a removal action or remedial action, the Division of Environmental Quality shall institute action to recover the expenditure from the person or persons liable for causing the release of the hazardous substance, including taking any appropriate legal action.

(b) Making use of any and all appropriate existing state legal remedies, the division or the Attorney General shall act to recover the amount expended by the state for any and all remedial action or removal actions from any and all parties identified as responsible parties for each hazardous substance.

(c) All moneys recovered from responsible parties pursuant to this section shall be deposited into the fund.

History. Acts 1985, No. 479, §§ 8, 9; A.S.A. 1947, §§ 82-4719, 82-4720; Acts 1991, No. 516, § 3; 1999, No. 1164, § 100; 2005, No. 1824, § 11; 2019, No. 910, § 2766.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" in (b).

8-7-516. Liens for expenditures and value of improvements.

(a) If the owner of real property that is the location of a hazardous substance site upon which remedial action or removal action is performed under this subchapter is responsible, in whole or in part, for causing the release of the hazardous substance, there shall exist a lien against the real property for the moneys expended. If the expenditure results in an increase in the value of the real property, the lien shall also be for the increase in value.

(b) The lien shall be effective upon the filing by the Director of the Division of Environmental Quality of a notice of lien with the circuit clerk in the county in which the real property is located.

(c) The lien obtained by this section shall not exceed the amount of expenditures, as itemized on an affidavit of expenditures attached to and filed with the notice of lien, and the increase in real property value as a result of the removal action, remedial action, or abatement action taken, as determined by an independent appraisal, a copy of which shall be attached to and filed with the notice of lien.

(d) The notice of lien shall be filed within thirty (30) days of the date of the last act performed on the real property by the Division of Environmental Quality or its agent under this subchapter.

(e) Upon filing of the notice of lien, a copy with attachments shall be served upon the real property owner in the manner provided for enforcement of mechanics' or materialmen's liens.

(f) Any and all moneys recovered or reimbursed pursuant to this section through voluntary agreements or court orders shall be deposited into and credited to the account of the Hazardous Substance Remedial Action Trust Fund.

History. Acts 1985, No. 479, § 9; A.S.A. 1947, § 82-4720; Acts 1988 (3rd Ex. Sess.), No. 15, § 2; 2005, No. 1824, § 13; 2019, No. 910, §§ 2767, 2768.

Amendments. The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b) and (d).

8-7-517. Punitive damages.

If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide remedial action or removal action upon order of the Division of Environmental Quality, the person may be liable to the state for punitive damages in an amount equal to three (3) times the amount of any costs incurred by the state as a result of the failure to take proper action.

History. Acts 1985, No. 479, § 8; A.S.A. 1947, § 82-4719; 2005, No. 1824, § 14; 2019, No. 910, § 2769.

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

Amendments. The 2019 amendment

8-7-518. Fees on the generation of hazardous waste.

(a) On or before April 1 of each year, the following persons shall report the total amount of such hazardous waste generated or accepted to the Director of the Division of Environmental Quality, except as provided in this section, on forms prescribed by the Division of Environmental Quality:

(1) Every person who generated hazardous waste in Arkansas during the preceding year; and

(2) Every person who accepted for treatment, storage, or disposal in Arkansas during the preceding year hazardous waste generated outside the state.

(b)(1)(A) Except as provided in this section, there is assessed a fee to be collected by the division upon every person who generated hazardous waste in Arkansas or who accepted hazardous waste generated outside of the state which was subsequently received for treatment, storage, or disposal in Arkansas based upon the combined total of such hazardous waste as is required to be reported pursuant to subsection (a) of this section.

(B) The fees shall be calculated and paid according to a schedule to be adopted by rule of the Arkansas Pollution Control and Ecology Commission, not to exceed a maximum of ten thousand dollars (\$10,000) annually per facility.

(2)(A) No person shall be required to pay fees based on the quantity of hazardous waste generated when such hazardous waste is managed in a totally enclosed treatment facility, an elementary neutralization unit, or a wastewater treatment unit, or when the hazardous waste is otherwise excluded by rule from inclusion in a facility's determination of its compliance status or category as a generator.

(B) Any person who has paid such fees for hazardous waste generated in 1997 or later years shall be entitled to a refund upon application for a refund.

(C) The division shall calculate the amount of fee refund due and provide the applicant with a copy of the calculation.

(D) The division shall promptly pay any refund due from the Hazardous Substance Remedial Action Trust Fund.

(c) On or before July 1 of each year, each person subject to subsection (a) of this section shall pay to the division the fee required by subsection (b) of this section.

(d) To the extent practicable, the division shall coordinate the reporting requirements of this section with the reporting requirements of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the rules adopted under the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq. The content of the reporting shall be consistent with federal reporting requirements pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., in all respects with the exception of frequency.

(e) The division shall prepare annually a statement of all revenues collected by the fees under this section, as well as all other revenues to

the fund, and all expenditures from the fund and obligations of the fund and the current balance in the fund.

History. Acts 1985, No. 479, § 7; A.S.A. 1947, § 82-4718; Acts 1987, No. 380, § 1; 1999, No. 1041, §§ 1-3; 2019, No. 315, §§ 634-636; 2019, No. 910, §§ 2770-2773.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” in (b)(1)(B) and (b)(2)(A); and substituted “rules” for “regulations” in (d).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” twice in the introductory language of (a); and substituted “division” for “department” throughout the section.

8-7-519. Appeals.

An appeal may be taken from any final order of the Division of Environmental Quality under this subchapter as provided in §§ 8-4-202, 8-4-210, 8-4-212—8-4-214, 8-4-218, 8-4-219, and 8-4-221 — 8-4-229 and in accordance with rules promulgated by the Arkansas Pollution Control and Ecology Commission under this subchapter.

History. Acts 1985, No. 479, § 13; A.S.A. 1947, § 82-4724; 2005, No. 1824, § 15; 2019, No. 315, § 637; 2019, No. 910, § 2774.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations”.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-7-520. Contribution.

(a) Any person who has undertaken or is undertaking remedial action at a hazardous substance site in response to an administrative or judicial order initiated against such person pursuant to § 8-7-508 or § 8-7-1104(d) may obtain contribution from any other person who is liable for such hazardous substance site.

(b) Any person who has resolved all or a portion of his or her liability for a hazardous substance site by undertaking remedial action pursuant to an administrative or judicially approved settlement may obtain contribution from any person who is liable for such hazardous substance site and is not a party to the settlement.

(c) Those persons identified under § 8-7-512(a) shall be the persons liable for the hazardous substance site.

(d) An action for contribution may be brought in the circuit court of the county in which the hazardous substance site is located. In resolving contribution claims, the circuit court shall allocate the costs and expenses incurred or to be incurred by the contribution claimant or claimants for undertaking remedial action among all persons liable for the hazardous substance site, using such equitable factors as the circuit court determines are appropriate.

(e) Any person who has resolved all or a portion of his or her liability for a hazardous substance site by undertaking remedial action pursuant to an administrative or judicial proceeding or settlement shall not

be liable for claims for contribution regarding matters addressed in the order or settlement which have been satisfactorily resolved. Such order or settlement does not discharge any of the other persons liable for the hazardous substance site who did not undertake or participate in the remedial action, unless the terms of the order or settlement so provide.

(f) [Repealed.]

(g) No action for contribution may be commenced more than three (3) years after the date of the administrative or judicial order or settlement with respect to such remedial action. In any such action, the circuit court shall enter a declaratory judgment on liability that will be binding on any subsequent action to recover costs and expenses for remedial action.

(h) In any action for contribution, judicial review of any issues concerning the adequacy of the remedial action shall be limited to the administrative record to determine whether the selected remedy contained in the order or settlement is arbitrary or capricious, and then only such costs and expenses as are found to be inconsistent with those terms of the administrative or judicial order or settlement found to be arbitrary or capricious may be disallowed.

History. Acts 1989, No. 441, § 3; 1995, No. 125, § 3; 1997, No. 1042, § 2; 2019, No. 693, § 22. **Amendments.** The 2019 amendment repealed (f).

8-7-521. Site access for remedial or removal action.

(a) For purposes of responding to an administrative or judicial order or settlement entered pursuant to § 8-7-508, the owner or the operator of a facility that is a hazardous substance site, or any person who otherwise controls access to such a facility, shall provide access to the Division of Environmental Quality, any employee of the division, or any other person, duly designated by the Director of the Division of Environmental Quality, who undertakes such activities as are required to carry out the terms of the order or settlement.

(b) Any person who impedes or interferes with a person who is entitled to site access for the purpose of conducting remedial action or removal action at a hazardous substance site pursuant to the terms of an administrative or judicial order or settlement may be assessed a civil penalty by the division in an administrative proceeding or by the court in a judicial proceeding for a site access injunction of up to ten thousand dollars (\$10,000) per day that site access is impeded.

(c) Any person who knowingly impedes or interferes with a person who is entitled to site access for the purpose of conducting remedial action or removal action at a hazardous substance site pursuant to the terms of an administrative or judicial order or settlement shall be guilty of a misdemeanor, punishable by a fine of up to one thousand dollars (\$1,000) or imprisonment for up to one (1) year, or both.

History. Acts 1989, No. 441, § 3; 2005, No. 1824, § 16; 2019, No. 910, § 2775.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” twice in (a); and substituted “division” for “department” in (a) and (b).

8-7-524. Recycling transactions — Definitions.

(a) The purposes of this section are:

(1) To promote the reuse and recycling of scrap material in Arkansas while protecting human health and the environment;

(2) To promote the goals of the Arkansas Pollution Prevention Act, § 8-10-201 et seq., and related Arkansas legislation intended to encourage recycling;

(3) To create greater equity in the statutory treatment of recycled material versus virgin materials;

(4) To remove the disincentives and impediments to recycling in Arkansas created as an unintended consequence of certain liability provisions contained in this subchapter; and

(5) To incorporate into this subchapter amendments to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, adopted by the United States Congress in 1999 in Pub. L. No. 106-113, thus ensuring that Arkansas law does not contain more stringent provisions than federal law.

(b)(1) As provided in subsections (c)-(f) of this section, a person who arranged for recycling of recyclable material shall not be liable under § 8-7-512(a)(3) or § 8-7-512(a)(4) with respect to the recyclable material.

(2) Nothing in this section shall be deemed to affect the liability of a person under § 8-7-512(a)(3) or § 8-7-512(a)(4) with respect to material that is not recyclable material as defined in subsection (c) of this section.

(c)(1) As used in this section, “recyclable material” means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber other than whole tires, scrap metal, or spent lead-acid batteries, spent nickel-cadmium batteries, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap.

(2) However, “recyclable material” does not include:

(A) Shipping containers of a capacity from thirty liters (30 l) to three thousand liters (3,000 l), whether intact or not, having any hazardous substance, but not metal bits and pieces or hazardous substance that form an integral part of the shipping container, contained on or adhering thereto; or

(B) Any item of material that contains polychlorinated biphenyls at a concentration in excess of fifty parts per million (50 ppm) or any new standard promulgated pursuant to applicable federal laws.

(d) Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber other than whole tires shall be deemed to be arranging for recycling of recyclable material, if the person who

arranged for the transaction by selling recyclable material or otherwise arranging for the recycling of recyclable material can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

- (1) The recyclable material met a commercial specification grade;
- (2) A market existed for the recyclable material;
- (3) A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a salable new product;
- (4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from virgin raw material;
- (5) For transactions occurring ninety (90) days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise managed by another person, i.e., a consuming facility, was in compliance with substantive, not procedural or administrative, provisions of any federal, state, or local environmental law or regulation or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material; and
- (6) As used in this subsection, "reasonable care" shall be determined using criteria that include:

- (A) The price paid in the recycling transaction;

- (B) The ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with recyclable material; and

- (C)(i) The result of inquiries made to the appropriate federal, state, or local environmental agency regarding the consuming facility's past and current compliance with substantive, not procedural or administrative, provisions of any federal, state, or local environmental law or regulation or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

- (ii) For the purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable material shall be deemed to be a substantive provision.

(e)(1) Transactions involving scrap metal shall be deemed to be arranging for recycling, if the person who arranged for the transaction by selling recyclable material or otherwise arranging for the recycling of recyclable material can demonstrate by a preponderance of the evidence that at the time of the transaction the person:

- (A) Met the criteria set forth in subsection (d) of this section with respect to the scrap metal;

- (B) Was in compliance with any applicable rules or standards regarding the storage, transport, management, or other activities

associated with the recycling of scrap metal that the Arkansas Pollution Control and Ecology Commission promulgates after the enactment of this section and with regard to transactions occurring after the effective date of those rules or standards; and

(C) Did not melt the scrap metal prior to the transaction.

(2) For purposes of subdivision (e)(1)(C) of this section, melting of scrap metal does not include the thermal separation of two (2) or more materials due to differences in their melting points, referred to as "sweating".

(3) Except for scrap metals that the United States Environmental Protection Agency or the commission excludes from this definition by regulation, as used in this subsection, "scrap metal" means:

(A) Bits and pieces of metal parts, such as bars, turnings, rods, sheets, or wire; or

(B) Metal pieces that may be combined together with bolts or soldering, such as radiators, scrap automobiles, or railroad box cars, which when worn or superfluous can be recycled.

(f) Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling, if the person who arranged for the transaction by selling recyclable material or otherwise arranging for the recycling of recyclable material can demonstrate by a preponderance of the evidence that at the time of the transaction:

(1) The person:

(A) Met the criteria set forth in subsection (d) of this section with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries, but did not recover the valuable components of such spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries; and

(B) With respect to transactions involving lead-acid batteries, was in compliance with applicable federal regulations or standards and Arkansas environmental rules or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

(2) With respect to transactions involving nickel-cadmium batteries, federal regulations or standards and Arkansas environmental rules or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations, rules, or standards or any amendments thereto; or

(3) With respect to transactions involving other spent batteries, federal regulations or standards and Arkansas environmental rules or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of those other spent batteries, and the person was in compliance with applicable regulations, rules, or standards or any amendments thereto.

(g)(1) The exemptions set forth in subsections (d)-(f) of this section shall not apply if the person:

(A) Had an objectively reasonable basis to believe at the time of the recycling transaction:

- (i) That the recyclable material would not be recycled;
- (ii) That the recyclable material would be burned as fuel, or for energy recovery or incineration; or
- (iii) For transactions occurring before ninety (90) days after the date of the enactment of this section, that the consuming facility was not in compliance with a substantive, not procedural or administrative, provision of any federal, state, or local environmental law, rule, or regulation or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

(B) Had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

(C) Failed to exercise reasonable care with respect to the management and handling of the recyclable material, including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances.

(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include:

- (A) The size of the person's business;
- (B) Customary industry practices, including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances;
- (C) The price paid in the recycling transaction; and
- (D) The ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

(h) Nothing in this section shall be deemed to affect the liability of a person under § 8-7-512(a)(1) or § 8-7-512(a)(2).

(i) The commission is authorized to promulgate additional rules concerning this section.

(j) The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the State of Arkansas before enactment of this section.

(k)(1) Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

(2) As used in this subsection, “person” does not include an agency, board, commission, or department of the State of Arkansas.

(1) Nothing in this section shall affect:

(1) Liability under any other federal, Arkansas, or local statute, rule, or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Arkansas Pollution Control and Ecology Commission under the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.; or

(2) The ability of the Arkansas Pollution Control and Ecology Commission to promulgate rules under any other statute, including the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

(m) Nothing in this section shall be construed to:

(1) Affect any defenses or liabilities of any person to whom subdivision (b)(1) of this section does not apply; or

(2) Create any presumption of liability against any person to whom subdivision (b)(1) of this section does not apply.

History. Acts 2001, No. 449, § 2; 2019, No. 315, §§ 638-643.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (e)(1)(B), (f)(1)(B), (f)(2), (f)(3), and (l)(2); inserted “regulations or standards” in

(f)(1)(B), (f)(2) and (f)(3); inserted the last occurrence of “rules” in (f)(2) and (f)(3); inserted “rule” in (g)(1)(A)(iii) and (l)(1); and deleted “and regulations” following “rules” in (i).

SUBCHAPTER 6 — LOW-LEVEL RADIOACTIVE WASTE

SECTION.

8-7-603. Approval and issuance of permits.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-7-603. Approval and issuance of permits.

Neither the Division of Environmental Quality nor any other agency or authority having the responsibility for approving and issuing permits for facilities for the disposal or storage of low-level radioactive waste in this state shall have the authority to approve or issue a permit

for any facility unless the facility will fully comply with the requirements of this subchapter in all respects.

History. Acts 1987, No. 562, § 3; 1999, No. 1164, § 101; 2019, No. 910, § 2776. substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.
Amendments. The 2019 amendment

SUBCHAPTER 7 — FEDERALLY LISTED HAZARDOUS SITES

SECTION.
8-7-702. Definitions.
8-7-705. Restrictions on use of hazardous substances.

SECTION.
8-7-706. Ad valorem tax exemption.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-7-702. Definitions.

As used in this subchapter:

- (1) “Hazardous site” means any geographic area located, in whole or in part, in the State of Arkansas, access to or use of which is determined by the Division of Environmental Quality to be necessary or appropriate to implement a response ordered by the President of the United States;
- (2)(A) “Hazardous substance” means:
 - (i) Any substance designated pursuant to § 311(b)(2)(A) of the Federal Water Pollution Control Act, 33 U.S.C. § 1321(b)(2)(A);
 - (ii) Any element, compound, mixture, solution, or substance designated pursuant to § 102 of the Federal Water Pollution Control Act, 33 U.S.C. § 1252;
 - (iii) Any hazardous waste having the characteristics identified under or listed pursuant to § 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6921, but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of the United States Congress;
 - (iv) Any toxic pollutant listed under § 307(a) of the Federal Water Pollution Control Act, 33 U.S.C. § 1317(a);

(v) Any hazardous air pollutant listed under § 112 of the Clean Air Act, 42 U.S.C. § 7412; and

(vi) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to § 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606.

(B) “Hazardous substance” does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subdivisions (2)(A)(i)-(vi) of this section.

(C) “Hazardous substance” does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or mixtures of natural gas and such synthetic gas;

(3) “Passive-site owner” means any person or entity owning any interest in any portion of a hazardous site, whether as owner, joint tenant, lessee, mortgagee, licensee, easement holder, mineral owner, or otherwise, and who has not entered into an agreement pursuant to 42 U.S.C. § 9622 for that hazardous site;

(4) “Response costs” means all amounts of removal or remedial action, including any costs and expenses incurred as a result of contractor delays, and other necessary amounts, including attorney’s fees and expenses reasonably incurred by any entity, including, but not limited to, the United States, the State of Arkansas, the governments of any other states, corporations, partnerships, and private citizens to investigate and secure a response action at a hazardous site; and

(5) “Settling party” means any person who has entered into an agreement with the United States pursuant to 42 U.S.C. § 9622.

History. Acts 1989, No. 350, § 2; 1999, substituted “Division of Environmental No. 1164, § 102; 2019, No. 910, § 2777. Quality” for “Arkansas Department of Environmental Quality” in (1).

Amendments. The 2019 amendment

8-7-705. Restrictions on use of hazardous substances.

Construction on or at a hazardous site and the use of such hazardous site for any residential, commercial, manufacturing, industrial, or recreational purposes shall be prohibited unless and until the Division of Environmental Quality issues an order terminating, wholly or partially, such prohibitions. Such order shall be subject to the procedural guidelines set forth in §§ 8-4-212 — 8-4-214 and 8-4-222 — 8-4-229 of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

History. Acts 1989, No. 350, § 6; 1999, substituted “Division of Environmental No. 1164, § 103; 2019, No. 910, § 2778. Quality” for “Arkansas Department of Environmental Quality”.

Amendments. The 2019 amendment

8-7-706. Ad valorem tax exemption.

Upon initiation of a response action at a hazardous site, such hazardous site shall be appraised at no value for purposes of any ad

valorem taxes levied by any state, county, or local governmental authority unless and until the Division of Environmental Quality issues an order wholly terminating the construction and use prohibitions established by § 8-7-705. This section shall not apply to the interest in such hazardous site owned by any passive-site owner or its successors and assigns that have violated § 8-7-703(a).

History. Acts 1989, No. 350, § 7; 1999, No. 1164, § 104; 2019, No. 910, § 2779.
Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the first sentence.

SUBCHAPTER 8 — REGULATED SUBSTANCE STORAGE TANKS

SECTION.	SECTION.
8-7-801. Definitions.	8-7-809. Corrective actions — Orders of director.
8-7-802. Division and commission — Powers and duties.	8-7-810. Insurance pools.
8-7-803. Rules generally.	8-7-811. Trade secrets.
8-7-804. Procedures generally.	8-7-812. Subchapter controlling over other laws.
8-7-805. License requirement.	8-7-813. Registration.
8-7-806. Penalties — Enforcement.	8-7-814. Delivery prohibition.
8-7-807. Responsibility and liability of owner.	8-7-816. Secondary containment.
8-7-808. Regulated Substance Storage Tank Program Fund.	8-7-817. Operator training.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-7-801. Definitions.

As used in this subchapter:
(1)(A) “Aboveground storage tank” means any one (1) or a combination of containers, vessels, and enclosures located aboveground, including structures and appurtenances connected to them, whose capacity is greater than one thousand three hundred twenty gallons (1,320 gals.) and not more than forty thousand gallons (40,000 gals.) and that is used to contain or dispense motor fuels, distillate special fuels, or other refined petroleum products.

(B) "Aboveground storage tank" does not include mobile storage tanks used to transport petroleum from one location to another or those used in the production of petroleum or natural gas;

(2) "Adjacent property owner" means any person, other than an owner or operator, owning an interest in any property affected by a release;

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(4) [Repealed.]

(5) "Operator" means any person in control of or having responsibility for the daily operation of an underground storage tank;

(6)(A) "Owner" means:

(i) In the case of an underground storage tank in use on November 8, 1984, or brought into use after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and

(ii) In the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such underground storage tank immediately before the discontinuation of its use.

(B) "Owner" does not include any person who, without participation in the management of an underground storage tank, holds indicia of ownership primarily to protect a security interest in the underground storage tank;

(7) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, or municipal, state, or federal government or agency, or any other legal entity, however organized;

(8) "Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure, sixty degrees Fahrenheit (60° F) and fourteen and seven-tenths pounds (14.7 lbs.) per square inch absolute;

(9) "Regulated substance" means:

(A) Any substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14), but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6921 et seq.; and

(B) Petroleum;

(10)(A) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

(B) "Release" does not include releases that are permitted or authorized by the Division of Environmental Quality or by federal law;

(11) "Release site property owner" means a person, other than an owner or operator, that owns an interest in a property on which a release has occurred;

(12) "Secondary containment" means a release prevention and release detection system for an underground storage tank or piping, or both, that provides an inner barrier and an outer barrier and an interstitial space between the two (2) barriers for monitoring to detect the presence of a leak or release of regulated substances from the underground storage tank or piping, or both;

(13) "Storage tank" means an aboveground storage tank or underground storage tank as defined in this subchapter; and

(14)(A) "Underground storage tank" means any one (1) or combination of tanks, including underground pipes connected thereto, which is or has been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground.

(B) "Underground storage tank" does not include any:

(i) Farm or residential tank of one thousand one hundred gallons (1,100 gals.) or less capacity used for storing motor fuel for noncommercial purposes;

(ii) Tank used for storing heating oil for consumptive use on the premises where stored;

(iii) Septic tank;

(iv) Pipeline facility, including gathering lines, regulated under:

(a) The Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. § 60101 et seq.; and

(b) The Hazardous Liquid Pipeline Safety Act of 1979;

(v) Surface impoundment, pit, pond, or lagoon;

(vi) Storm water or wastewater collection system;

(vii) Flow-through process tank;

(viii) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(ix) Storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(x) Pipes connected to any tank that is described in subdivisions (14)(B)(i)-(ix) of this section.

History. Acts 1989, No. 172, § 1; 1993, No. 810, § 1; 1995, No. 427, § 1; 1995, No. 436, § 1; 1999, No. 600, § 1; 1999, No. 1164, § 105; 2001, No. 1471, § 1; 2007, No. 264, § 1; 2009, No. 282, § 1; 2013, No. 1509, § 1; 2019, No. 910, §§ 2780, 2781.

Amendments. The 2019 amendment repealed (4); and substituted "Division of Environmental Quality" for "department" in (10)(B).

8-7-802. Division and commission — Powers and duties.

(a) The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

(1) To promulgate, after notice and public hearing, and to modify, repeal, and enforce, as necessary or appropriate to implement or effectuate the purposes and intent of this subchapter, rules relating to

an underground storage tank release detection, prevention, corrective action, and financial responsibility program as required by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., and the Energy Policy Act of 2005, Pub. L. No. 109-58; and

(2)(A) To set reasonable fees for licensure of individuals and annual registration of underground storage tanks and aboveground storage tanks by rule.

(B)(i) The annual registration fee for underground storage tanks shall not exceed seventy-five dollars (\$75.00) per underground storage tank.

(ii) The fee shall be used by the Division of Environmental Quality for administrative and program costs.

(C)(i) The annual registration fee for aboveground storage tanks shall not exceed seventy-five dollars (\$75.00) per aboveground storage tank.

(ii) The fee shall be used by the Division of Environmental Quality for administrative and program costs, and ten dollars (\$10.00) of the fee collected by the Division of Environmental Quality shall be remitted to the State Treasury, there to be deposited as special revenues to the credit of the Division of Arkansas State Police Fund to be used for the purposes of above-ground storage tank monitoring and regulation by the Division of Arkansas State Police.

(b) The Division of Environmental Quality shall have the following powers and duties:

(1) To administer and enforce all laws, rules, and regulations relating to an underground storage tank release detection, prevention, and corrective action program, and financial responsibility, including the use of any and all appropriate legal remedies, to recover costs and collect penalties under this subchapter;

(2) To advise, consult, cooperate, and enter into agreements with appropriate federal, state, interstate, and local units of government and with affected groups and industries in the formulation of plans and in implementation of a program pursuant to this subchapter;

(3) To accept and administer loans and grants from the United States Government and from such other sources as may be available to the Division of Environmental Quality for the planning, implementation, and enforcement of an underground storage tank program for release detection, prevention, corrective action, and financial responsibility;

(4) To examine and license individuals for the installation and testing of underground storage tanks;

(5) To enter upon any public or private property for the purpose of obtaining information, conducting surveys or investigations, or taking corrective action, and the Division of Environmental Quality may copy or require submission of books, papers, records, memoranda, or data pertaining to the management of underground storage tanks;

(6) To enter into a cooperative agreement with the United States Environmental Protection Agency to carry out corrective actions and

enforcement activities, including use of funds provided from the federal Leaking Underground Storage Tank Trust Fund, 26 U.S.C. § 9508; and

(7) To take such other action as necessary and appropriate to carry out the purposes of this subchapter and meet the requirements of federal law.

History. Acts 1989, No. 172, § 2; 1991, No. 594, § 1; 1993, No. 810, § 2; 2005, No. 671, § 1; 2007, No. 264, § 2; 2019, No. 315, §§ 644, 645; 2019, No. 910, §§ 2782-2786.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (a)(1); and deleted “or regulation” following “rule” in (a)(2)(A).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” throughout the section; and, in (a)(2)(C)(ii), substituted “Division of Arkansas State Police Fund” for “Department of Arkansas State Police Fund”, and “Division of Arkansas State Police” for “Department of Arkansas State Police”.

8-7-803. Rules generally.

Any rules promulgated under this subchapter shall as much as possible be identical to and no more stringent than the federal regulations adopted by the United States Environmental Protection Agency.

History. Acts 1989, No. 172, § 3; 2019, No. 315, § 646.

Amendments. The 2019 amendment

substituted “Rules” for “Regulations” in the section heading; and substituted “rules” for “regulations” in the text.

8-7-804. Procedures generally.

The procedure of the Division of Environmental Quality and the Arkansas Pollution Control and Ecology Commission for issuance of rules, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229, including, but not limited to, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229 to the extent they are not in conflict with the provisions of this subchapter.

History. Acts 1989, No. 172, § 4; 1993, No. 810, § 3; 2019, No. 315, § 647; 2019, No. 910, § 2787.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules”.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

8-7-805. License requirement.

(a) It shall be unlawful for an individual to certify the installation or testing of an underground storage tank unless the individual has been duly licensed by the Division of Environmental Quality.

(b)(1) Furthermore, no licensee shall install, remove, repair, close, upgrade, or test any underground storage tank unless the licensee or the contracting company by whom he or she is employed has purchased a surety bond, letter of credit, or cash bond:

(A) In the amount of at least twenty-five thousand dollars (\$25,000); and

(B) Which provides that the division is the obligee or payee of the instrument and otherwise complies with the rules promulgated under this subchapter.

(2) The surety bond shall be issued by a company authorized to do business in the State of Arkansas and executed by an Arkansas agent.

(c) Licensees whose installation or testing activities are limited to their own or their employers' companies' underground storage tanks are exempt from the requirement to meet the financial responsibility requirements provided by this section.

(d) In the event the licensee or contracting company fails to properly install, remove, repair, close, upgrade, or test any underground storage tank pursuant to state law or rule, the Director of the Division of Environmental Quality shall commence proceedings to collect on the surety bond, letter of credit, or cash bond on which the division is the obligee or payee.

History. Acts 1989, No. 172, § 5; 1991, No. 1186, § 1; 1993, No. 1019, § 1; 1999, No. 601, § 1; 1999, No. 1164, § 106; 2003, No. 1203, § 1; 2005, No. 193, §§ 1, 2; 2019, No. 315, §§ 648, 649; 2019, No. 910, §§ 2788-2790.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regula-

tions" in (b)(1)(B); and substituted "rule" for "regulation" in (d).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a) and (d); and substituted "division" for "department" in (b)(1)(B) and (d).

8-7-806. Penalties — Enforcement.

(a) It shall be unlawful for any person:

(1) To violate any provision of this subchapter or any rule adopted under this subchapter;

(2) To knowingly make a false statement, representation, or certification in any report or other document submitted under or required by this subchapter or the Petroleum Storage Tank Trust Fund Act, § 8-7-901 et seq., or any rule issued pursuant thereto; or

(3) To violate any order issued by the Division of Environmental Quality under this subchapter or any provision of any such order.

(b) Any person who knowingly makes a false statement, representation, or certification as described in subdivision (a)(2) of this section shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each such violation.

(c) Any owner or operator who fails to give any notification regarding storage tanks required by this subchapter or any rule issued pursuant to this subchapter shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each storage tank for which notification is not given.

(d)(1) Any person who violates any provision of this subchapter or of any rule, permit, certification, license, plan, or order issued pursuant thereto or who commits an unlawful act under this section may be

assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation or unlawful act.

(2) Each day of a continuing violation or unlawful act may be deemed a separate violation or unlawful act for purposes of civil penalty assessment.

(3) If the violation or unlawful act concerns the operation of an underground storage tank, the civil penalty shall not exceed ten thousand dollars (\$10,000) for each underground storage tank for each day of violation or unlawful action.

(4) No civil penalty may be assessed until the person charged with the violation or unlawful act has been given the opportunity for a hearing in accordance with rules adopted by the Arkansas Pollution Control and Ecology Commission.

(5) The administrative procedures set forth in § 8-7-804 may be used to recover all costs, expenses, and damages to the division and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages.

(e) The division is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter or of any rule, permit, certification, license, plan, or order issued pursuant to this subchapter or restrain the commission of any unlawful act under this section;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the division and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this subchapter or of any rule, permit, certification, license, plan, or order issued pursuant to this subchapter or for any unlawful act under this section;

(5) Recover civil penalties assessed pursuant to subsection (d) of this section; or

(6) Forfeit a surety bond purchased pursuant to this subchapter.

(f)(1) All civil penalties collected under this section shall be deposited into the Regulated Substance Storage Tank Program Fund.

(2) All moneys collected which represent the costs, expenses, or damages of another agency or subdivision of the state shall be distributed to the appropriate governmental entity.

History. Acts 1989, No. 172, § 6; 1993, No. 810, § 4; 2003, No. 486, § 1; 2019, No. 315, §§ 650-655; 2019, No. 910, §§ 2791-2794.

Amendments. The 2019 amendment by No. 315 deleted “or regulation” following “rule” twice in (a); substituted “rule” for “regulation” in (c); deleted “regulation”

following “rule” in (d)(1), (e)(1), and (e)(4); and substituted “rules” for “regulations” in (d)(4).

The 2019 amendment by No. 910 substituted “Division of Environmental Qual-

ity” for “Arkansas Department of Environmental Quality” in (a)(3); and substituted “division” for “department” in (d)(5) and throughout (e).

8-7-807. Responsibility and liability of owner.

(a)(1) Upon a determination that a release of a regulated substance from a storage tank has occurred, the owner or operator shall notify the Division of Environmental Quality. The owner or operator shall immediately undertake to collect and remove the release and to restore the area affected in accordance with the requirements of this subchapter.

(2) However, the obligation of an owner or operator of an above-ground storage tank to notify the division or undertake the other activities required in this subsection shall not exceed and will be limited to the existing requirements of any other applicable federal statutes or regulations, or state statutes or rules.

(b) If the owner or operator fails to proceed as required in subsection (a) of this section, the owner and operator shall be liable to the division for any costs incurred by the division for undertaking corrective action or enforcement action with respect to the release of a regulated substance from a storage tank.

(c)(1)(A) A release site property owner or adjacent property owner shall not unduly impede or interfere with the efforts of the division or the owner or operator to undertake investigation, site assessment, or corrective action in accordance with the requirements of this subchapter.

(B) The division or the owner, as defined in § 8-7-801, or operator shall undertake investigation, site assessment, or corrective action, as approved by the division after notice to the affected parties, that minimizes to the most reasonable extent practicable any interference with the release site property owner’s or adjacent property owner’s use and enjoyment of the property, taking into consideration the relevant private and commercial interests and the release site property owner’s or adjacent property owner’s need for access.

(2)(A) A release site property owner or adjacent property owner that violates subdivision (c)(1) of this section is liable for any investigation, site assessment, or corrective action costs resulting from the violation.

(B) If the release site property owner or adjacent property owner denies access to property when the access is reasonably necessary for investigation, site assessment, or corrective action undertaken by the division or by the owner or operator under a division directive, order, or approved corrective action plan, the division may order the release site property owner or adjacent property owner to undertake the portion of investigation, site assessment, or corrective action that was prohibited by the denial of access.

(3) This section does not impair any right of the release site property owner or adjacent property owner to seek equitable or legal remedies,

including without limitation claims for trespass, compensation as the result of eminent domain, damages for temporary or permanent takings of rights in land, contribution, and any other right or remedy allowed by state law or rule, or federal law or regulation.

(d)(1) Any party found liable for any costs or expenditures recoverable under this subchapter which establishes by a preponderance of the evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for that portion.

(2) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures, the court shall apportion the costs or expenditures, to the extent practicable, according to equitable principles, among the responsible parties.

(3) In any action under this subchapter, no responsible party shall be liable for more than that party's apportioned share of the amount of costs or expenditures recoverable for the site.

(4) Any expenditures required under this subchapter made by a responsible party, before or after suit or before or after a complaint has been filed with or heard by the Arkansas State Claims Commission, shall be credited toward any apportioned share.

(e) Any costs recovered by the division under this section shall be used to reimburse the Petroleum Storage Tank Trust Fund in the amount utilized by the division and the balance, if any, deposited into the Regulated Substance Storage Tank Program Fund.

History. Acts 1989, No. 172, § 7; 1993, No. 810, § 5; 1999, No. 600, § 2; 2013, No. 1509, § 2; 2019, No. 315, §§ 656, 657; 2019, No. 910, §§ 2795, 2796.

Amendments. The 2019 amendment by No. 315 substituted "federal statutes or regulations, or state statutes or rules" for "federal or state statutes or regulations"

in (a)(2); and inserted "law or rule" in (c)(3).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the first sentence of (a)(1); and substituted "division" for "department" throughout the section.

8-7-808. Regulated Substance Storage Tank Program Fund.

There is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Regulated Substance Storage Tank Program Fund". Such Regulated Substance Storage Tank Program Fund shall consist of federal funds, any necessary state matching funds as may be provided by the General Assembly, licensure fees, annual registration fees, and any moneys recovered by the Division of Environmental Quality which are attributable to collections of civil penalties under § 8-7-806 or to costs under § 8-7-807 not owed the Petroleum Storage Tank Trust Fund. All said moneys shall be deposited as special revenues to be used in the administration of this subchapter.

History. Acts 1989, No. 172, § 8; 2019, No. 910, § 2797.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in the second sentence.

8-7-809. Corrective actions — Orders of director.

(a) Nothing in this subchapter or the rules promulgated under this subchapter shall prevent any person from undertaking corrective action which would provide reasonable protection of public health and safety and the environment.

(b)(1) Notwithstanding any other provisions of this subchapter, the Director of the Division of Environmental Quality, upon finding that the release may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare or the environment may, without notice or hearing, issue an order reciting the existence of such an imminent hazard and emergency and requiring that such action be taken as he or she determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(2) The order of the director may include, but is not limited to, directing the owner or operator of the site which constitutes the hazard to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard, and, with respect to a facility or site, the director may order cessation of operation.

(3) Any person to whom the order is directed shall comply with it immediately, but, upon written application to the director within ten (10) days of the issuance of the order, that person shall be afforded a hearing before the Arkansas Pollution Control and Ecology Commission within ten (10) days after receipt of the written request.

(4) On the basis of the hearing, the commission shall continue the order in effect or shall revoke or modify it.

History. Acts 1989, No. 172, § 9; 1993, No. 810, § 6; 2019, No. 315, § 658; 2019, No. 910, § 2798.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (a).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (b)(1).

8-7-810. Insurance pools.

(a) Owners or operators of storage tanks who are unable to demonstrate financial responsibility in the minimum amounts specified by the Division of Environmental Quality may establish an insurance pool in order to demonstrate such financial responsibility.

(b)(1) The formation and operation of an insurance pool under this section shall be subject to approval by the Insurance Commissioner, who shall, after notice and hearing, establish through rules a method for approval and monitoring of such insurance pools.

(2) Such rules may include:

(A) Provisions for periodic examinations of financial condition, including inspection of books, papers, accounts, and affairs of the plan;

(B) Conditions for participation in the plan;

(C) Minimum amounts of cash reserves and insurance coverage to be acquired;

(D) Requirements for sound management of the plan;

(E) Grounds for suspension or withdrawal of approval of the plan; and

(F) Grounds for termination of the plan.

History. Acts 1989, No. 172, § 10; “rules” for “regulations” in the introductory language of (b)(2).
2019, No. 315, § 659; 2019, No. 910, § 2799.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a).
by No. 315 deleted “and regulations” following “rules” in (b)(1); and substituted

8-7-811. Trade secrets.

(a) Any records, reports, or information obtained by the Department of Energy and Environment, the Secretary of the Department of Energy and Environment, or the Division of Environmental Quality or by the department’s or division’s employees in the administration of this subchapter, except release data, shall be kept confidential upon a showing satisfactory to the Director of the Division of Environmental Quality that the records, reports, or information would constitute a trade secret under § 4-75-601 et seq.

(b) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing claim of confidentiality to other officers or employees of the state or of the United States if the owner or operator of the facility to which the information pertains is informed of the transmittal and if the information has been acquired by the division under the provisions of this subchapter.

(c) The provisions of this section shall not be construed to limit the division’s authority to release confidential information during emergency situations.

(d) Any violation of this section is a Class A misdemeanor.

History. Acts 1989, No. 172, § 11; “shall be unlawful and shall constitute a”
1993, No. 810, § 7; 2019, No. 693, § 23; in (d).
2019, No. 910, § 2800.

Amendments. The 2019 amendment rewrote (a); and substituted “division’s” for “department’s” in (b) and (c).
by No. 693 substituted “is a Class A” for

8-7-812. Subchapter controlling over other laws.

(a) This subchapter shall supersede and preempt all local government laws, ordinances, rules, and regulations pertaining to underground storage tanks, except for any applicable local building permit or

fire code requirements pertaining to installation of underground storage tanks.

(b) The provisions of this subchapter and the rules promulgated pursuant to this subchapter shall govern if they conflict with the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., or any action taken by the Division of Environmental Quality under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

History. Acts 1989, No. 172, § 12; 2019, No. 315, § 660; 2019, No. 910, § 2801.

Amendments. The 2019 amendment by No. 315 inserted “rules” in (a); and deleted “and regulations” following “rules” in (b).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (b).

8-7-813. Registration.

(a) Except as provided under subsections (e) and (f) of this section, all owners and operators of storage tanks shall register their storage tanks as required by federal regulations and in accordance with the rules adopted under this subchapter.

(b)(1) Except as provided under subsections (e) and (f) of this section, all owners and operators shall maintain proof of current and proper registration at the registered facility and post the proof in a conspicuous place on-site.

(2) Proof of registration shall be in the form determined by rules adopted under this subchapter.

(c)(1) If a storage tank is required to be registered under this subchapter, the owner or operator shall not receive any regulated substance into any storage tank for which current and proper proof of registration has not been provided to the person selling the regulated substance.

(2) A person selling any regulated substance shall not deliver or cause to be delivered a regulated substance into any storage tank for which he or she has not obtained current and proper proof of registration from the owner or operator.

(d) Any person violating this section is subject to § 8-7-806.

(e) This subchapter does not apply to aboveground storage tanks located on farms, the contents of which are used for agricultural purposes and not held for resale.

(f) An aboveground storage tank that contains petroleum may be registered under this subchapter at the option of the owner or operator for the purpose of allowing potential eligibility for reimbursement under the Petroleum Storage Tank Trust Fund Act, § 8-7-901 et seq.

History. Acts 1993, No. 810, § 8; 2017, substituted “rules” for “regulations” in (a) No. 584, § 1; 2019, No. 315, §§ 661, 662. and (b)(2).

Amendments. The 2019 amendment

8-7-814. Delivery prohibition.

(a) It shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility that has been identified by the Division of Environmental Quality to be ineligible for fuel delivery or deposit.

(b) The Arkansas Pollution Control and Ecology Commission shall adopt rules to implement the criteria and process required by the delivery prohibition requirements of the Energy Policy Act of 2005, Pub. L. No. 109-58, and the rules shall consist of, at a minimum, the federal guidelines for determining the significant operational compliance of underground storage tank systems.

(c) In order to prevent the delivery of a regulated substance into an underground storage tank system that has been identified by the division to be ineligible for fuel delivery or deposit, the division shall affix a tamper-proof tag, seal, or other device blocking the fill pipes of the ineligible underground storage tank. This affixed notice shall serve as written notification to the owner, the operator, and the product delivery industry.

(d) No owner or operator shall receive any regulated substance into any underground storage tank to which notification of delivery prohibition has been affixed.

(e) No person selling any regulated substance shall deliver or cause to be delivered a regulated substance into any underground storage tank to which notification of delivery prohibition has been affixed.

(f) It shall be unlawful for any person, other than an authorized representative of the division, to remove, tamper with, destroy, or damage a device affixed to any underground storage tank by division personnel.

(g) Any person violating any provision of this section shall be subject to an assessment of an administrative civil penalty as set forth in this subchapter.

History. Acts 1999, No. 505, § 1; 2007, substituted “rules” for “regulations” twice No. 264, § 3; 2019, No. 315, § 663. in (b).

Amendments. The 2019 amendment

8-7-816. Secondary containment.

(a)(1) Each new underground storage tank or piping connected to any new underground storage tank shall be secondarily contained and monitored for leaks.

(2) In the case of a new underground storage tank system consisting of one (1) or more underground storage tanks and connected by piping, the requirement to provide secondary containment shall apply to all

underground storage tanks and connected pipes comprising such underground storage tank system.

(b)(1) Any existing underground storage tank or existing piping connected to an existing underground storage tank that is replaced shall be secondarily contained and monitored for leaks.

(2) In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, the requirement to provide secondary containment shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such underground storage tank system.

(c)(1) Each installation of a new motor fuel dispenser system or replacement of an existing motor fuel dispenser system shall include under-dispenser spill containment.

(2) A motor fuel dispenser system is considered to have been replaced when an existing motor fuel dispenser and the equipment necessary to connect the motor fuel dispenser to the underground storage tank system are removed and another motor fuel dispenser and the equipment necessary to connect the motor fuel dispenser to the underground storage tank system are put in its place.

(d) All secondary containment installed shall comply with federal regulations for underground storage tanks and the rules adopted under this subchapter.

(e) Any person violating any provision of this section shall be subject to the provisions of § 8-7-806.

History. Acts 2007, No. 264, § 4; 2017, No. 534, §§ 1-4; 2019, No. 315, § 664.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (d).

8-7-817. Operator training.

(a) All operators of underground storage tank systems shall complete training in the operation and maintenance of underground storage tank systems in accordance with rules promulgated under this section.

(b) For purposes of compliance with this section, the following persons shall be considered “operators” required to receive operator training:

(1) Persons having primary responsibility for on-site operation and maintenance of underground storage tank systems;

(2) Persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems; and

(3) Daily on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

History. Acts 2007, No. 264, § 5; 2019, No. 315, § 665.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a).

SUBCHAPTER 9 — PETROLEUM STORAGE TANK TRUST FUND ACT

SECTION.

- 8-7-902. Definitions.
- 8-7-903. Rules — Powers of division.
- 8-7-904. Advisory committee.
- 8-7-905. Petroleum Storage Tank Trust Fund.
- 8-7-906. Petroleum environmental assurance fee.

SECTION.

- 8-7-907. Payments for corrective action.
- 8-7-908. Third-party claims.
- 8-7-909. Confidential treatment of information.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-7-902. Definitions.

As used in this subchapter:

(1)(A) “Aboveground storage tank” means any one (1) or a combination of containers, vessels, and enclosures located aboveground, including structures and appurtenances connected to them, the capacity of which is greater than one thousand three hundred twenty gallons (1,320 gals.) and not more than forty thousand gallons (40,000 gals.) and that is used to contain or dispense motor fuels, distillate special fuels, or other refined petroleum products.

(B) “Aboveground storage tank” does not include mobile storage tanks used to transport petroleum from one (1) location to another or those used in the production of petroleum or natural gas;

(2) “Accidental release” means any sudden or nonsudden confirmed release of petroleum from a storage tank that results in a need for corrective action or a claim for compensatory damages, or both, neither expected nor intended by the storage tank owner or operator;

(3) “Advisory committee” or “committee” means the Advisory Committee on Petroleum Storage Tanks as established in this subchapter;

(4) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(5)(A) “Compensatory damages” means all damages for which an owner or operator may be liable, including, without limitation, bodily injury or property damage.

(B) “Compensatory damages” does not include:

(i) Punitive damages; or

(ii) The costs of litigation, which shall not be limited to attorney's or expert witness fees.

(C) This definition shall apply to any pending third-party claim which has not been reduced to judgment as of April 7, 2003;

(6) "Corrective action" means those actions which may be necessary to protect human health and the environment as a result of an accidental release, sudden or nonsudden;

(7) [Repealed.]

(8) [Repealed.]

(9) "Distributor" means and includes any person, including the State of Arkansas and any political subdivision thereof, but not including the United States or any of its instrumentalities, except to the extent permitted by the United States Constitution or laws thereof, who is customarily in the wholesale business of offering motor fuels for resale or delivery to dealers, consumers, or others in storage tanks of two hundred gallons (200 gals.) or more which are not connected to motor vehicles and is:

(A) Making the first sale in the State of Arkansas of any motor fuel imported into the state from any other state, territory, or foreign country after it has been received within this state within the meaning of the Motor Fuel Tax Law, § 26-55-201 et seq.;

(B) Consuming or using in the State of Arkansas any motor fuel so imported and who has purchased it before it has been received by any other person in this state, within the meaning of the Motor Fuel Tax Law, § 26-55-201 et seq.; or

(C) Producing, refining, preparing, distilling, manufacturing, blending, or compounding motor fuel in this state;

(10) "Fund" means the Petroleum Storage Tank Trust Fund created by this subchapter;

(11) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from a storage tank;

(12) "Owner or operator", when the owner and operator are separate parties, means the person who is required to obtain financial assurances under the state underground storage tank program or federal underground storage tank program;

(13) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, or venture, or municipal, state, or federal government or agency, or any other legal entity, however organized;

(14) "Petroleum" means petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit (60° F) and fourteen and seventenths pounds per square inch (14.7 psi) absolute;

(15)(A) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a storage tank into groundwater, surface water, or subsurface soils.

(B) "Release" does not include a release that is permitted or authorized by the Division of Environmental Quality or by federal law;

(16) "Storage tank" means an aboveground storage tank or underground storage tank as defined in this subchapter;

(17)(A) "Supplier" means any person who is customarily in the wholesale business of offering distillate special fuels or liquefied gas special fuels for resale or use to any person in this state and who makes bulk sales of fuel.

(B) "Supplier" includes pipeline importers, first receivers, and second receivers;

(18) "Terminal" means a bulk storage facility for storing petroleum products supplied by pipeline or marine vessels;

(19)(A) "Underground storage tank" means any one (1) or a combination of tanks, including underground pipes connected thereto, that is or has been used to contain petroleum, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground.

(B) "Underground storage tank" does not include any:

(i) Farm or residential tank of one thousand one hundred gallons (1,100 gals.) or less capacity used for storing motor fuel for noncommercial purposes;

(ii) Tank used for storing heating oil for consumptive use on the premises where stored;

(iii) Septic tank;

(iv) Intrastate and interstate pipeline facilities regulated by the Arkansas Public Service Commission or other applicable state or federal agency and all other pipeline facilities, including gathering lines regulated under:

(a) The Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. § 60101 et seq.; or

(b) The Hazardous Liquid Pipeline Safety Act of 1979;

(v) Surface impoundment, pit, pond, or lagoon;

(vi) Storm water or wastewater collection system;

(vii) Flow-through process tank;

(viii) Liquid trap or associated gather lines directly related to oil or gas production and gathering operations;

(ix) Storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(x) Any pipes connected to any tank which is described in this subdivision (19)(B); and

(20)(A) "Unknown petroleum storage tank" means a petroleum storage tank as defined by this subchapter whose existence on a property or facility at the time of the discovery of a release was not known or should not have reasonably been known by the owner or operator.

(B) An owner or operator is deemed to have known of the existence of an unknown petroleum storage tank if there was surficial evidence

of such a petroleum storage tank in the form of visible vent pipes, fill caps, or lines protruding from the petroleum storage tank.

History. Acts 1989, No. 173, § 2; 1989 (3rd Ex. Sess.), No. 65, §§ 1, 2; 1991, No. 616, § 1; 1993, No. 951, § 1; 1997, No. 641, § 1; 1997, No. 1027, §§ 3, 4; 1999, No. 1164, § 107; 2001, No. 1471, § 3; 2003, No. 1114, § 1; 2009, No. 282, § 3; 2019, No. 910, §§ 2802, 2803.

Amendments. The 2019 amendment repealed (7) and (8); and substituted “Division of Environmental Quality” for “department” in (15)(B).

8-7-903. Rules — Powers of division.

(a) The Secretary of the Department of Finance and Administration is authorized to adopt appropriate rules not inconsistent with this subchapter as he or she may deem necessary to carry out the intent and purposes of and to assure compliance with this subchapter.

(b) The Arkansas Pollution Control and Ecology Commission is authorized to adopt appropriate rules not inconsistent with this subchapter to carry out the intent and purposes of and to assure compliance with this subchapter.

(c) The Division of Environmental Quality shall have the authority to enter upon the property of any owner or operator of an aboveground storage tank to obtain information, conduct surveys, or review records for the purpose of determining substantial compliance, as defined by this subchapter and rules promulgated thereunder, with all state laws and rules and federal laws and regulations relating to aboveground storage tanks prior to the secretary’s approval of a claim for reimbursement or disbursement.

History. Acts 1989, No. 173, § 5; 1989 (3rd Ex. Sess.), No. 65, § 7; 1993, No. 951, § 2; 1997, No. 641, § 2; 2019, No. 315, § 666; 2019, No. 910, §§ 2804, 2805.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “Rules” in the section heading, in (a), and (b); and, in (c), substituted “rules” for “regulations” and inserted “laws and rules”.

The 2019 amendment by No. 910 substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (a); and substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (c).

8-7-904. Advisory committee.

(a)(1) There is established the Advisory Committee on Petroleum Storage Tanks to be composed of the following members:

(A) A representative from the property and casualty segment of the insurance industry;

(B) A representative from a company that is a refiner and also has service stations or other motor fuel retail outlets in the state;

(C) A representative from a company that is a jobber or wholesaler of petroleum products in the state;

(D) An independent retail service station dealer;

(E) The State Fire Marshal or his or her designee;

(F) A representative from a company that installs or repairs petroleum storage tanks; and

(G) A representative from a company that has one (1) or more employees with knowledge and expertise regarding environmental protection and management matters.

(2) The Governor shall appoint the members of the committee subject to confirmation by the Senate as follows:

(A) The Governor shall consult the Arkansas Petroleum Council before making the appointment under subdivision (a)(1)(B) of this section;

(B) The Governor shall consult the Arkansas Oil Marketers Association before making the appointment under subdivision (a)(1)(C) of this section;

(C) The Governor shall consult the Service Station Dealers of Arkansas before making the appointment under subdivision (a)(1)(D) of this section; and

(D) The Governor shall consult the Arkansas Environmental Federation, Inc., before making the appointment under subdivision (a)(1)(G) of this section.

(3) Each member of the committee shall serve a four-year term and until a successor has been appointed.

(4) Any vacancies shall be filled by the Governor to serve the remainder of the term.

(b) Committee members shall serve without compensation but may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(c) The committee shall select a member to serve as chair each year.

(d) The committee shall meet as necessary to carry out its duties under this subchapter and at the call of the chair.

(e) The Division of Environmental Quality shall provide adequate staff to support the activities of the committee.

(f) The committee shall adopt all rules necessary to conduct its business.

(g) The committee shall advise and make recommendations to the Director of the Division of Environmental Quality regarding claims for payment under this subchapter.

(h) The committee shall advise the division and the Arkansas Pollution Control and Ecology Commission regarding promulgation of rules concerning storage tanks.

(i) No member of the committee shall participate in any decision on any claim in which the firm or organization by which that member is employed or in which that member has a direct or indirect financial interest is involved.

History. Acts 1989, No. 173, § 6; 1993, No. 1508, §§ 2, 7; 2015, No. 1100, § 8; No. 951, § 3; 1997, No. 250, § 49; 1997, 2019, No. 315, §§ 667, 668; 2019, No. 910, No. 1018, § 1; 1997, No. 1354, § 9; 1999, §§ 2806-2808.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (f) and (h).

The 2019 amendment by No. 910 substituted “Division of Environmental Qual-

ity” for “Arkansas Department of Environmental Quality” in (e) and (g); and substituted “division” for “department” in (h).

8-7-905. Petroleum Storage Tank Trust Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Petroleum Storage Tank Trust Fund”, hereinafter referred to as the “fund”.

(b) The fund will be administered by the Director of the Division of Environmental Quality, who shall make disbursements from the fund as authorized by this subchapter.

(c) The fund shall consist of gifts, grants, donations, and such other funds as may be made available by the General Assembly, including all interest earned upon money deposited into the fund, fees assessed under this subchapter, any moneys recovered by the Division of Environmental Quality, the proceeds of bonds issued by the Arkansas Development Finance Authority for the benefit of the fund, and any other moneys legally designated for the fund.

(d) Moneys in the fund may be expended by the director solely for the following purposes, as limited by the provisions of subsection (e) of this section:

(1) The state share mandated by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.;

(2) To pay costs incurred by the Arkansas Pollution Control and Ecology Commission, the director, the Attorney General, or the Advisory Committee on Petroleum Storage Tanks in the performance of their duties under this subchapter;

(3) To pay reimbursement to owners and operators for taking corrective action or to pay third parties for compensatory damages caused by accidental releases from qualified storage tanks;

(4) To pay reasonable and necessary costs and expenses of the division for taking corrective action caused by accidental releases from a storage tank of unknown ownership or when corrective action is not commenced by the owner or operator in a timely manner;

(5)(A) To reimburse owners and operators in the vicinity of the release for performing short-term testing or monitoring which is in addition to that required by the division’s rules if the division has a reasonable basis for believing that the petroleum underground storage tank or tanks may be the source of the release.

(B) The owners and operators of petroleum underground storage tanks, including out-of-service and nonoperational petroleum underground storage tanks, not found to be the source of the release and who cooperate with the division may apply to the fund for reimbursement for such testing and monitoring costs, not including lost managerial time or loss of revenues because of temporary business closure; and

(6) To reimburse a consultant under § 8-7-907(k) for the purchase of equipment needed to undertake corrective action.

(e) Notwithstanding any other provisions of this subchapter, the director, upon finding that a release may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare or the environment, may, without receiving prior advice from the committee, issue an order reciting the existence of such an imminent hazard and emergency and ordering a disbursement or reimbursement of up to fifty thousand dollars (\$50,000) from the fund so that such action may be taken as he or she determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(f)(1) No expenditure from the fund shall be made for expenses for retrofitting or replacement of petroleum storage tanks.

(2) No expenditure from the fund pursuant to subdivisions (d)(3) and (5) of this section shall be made for attorney's fees.

(g) The liability or obligation of the fund is not the liability or obligation of the State of Arkansas. However, this subsection shall not be construed as relieving the fund of any liability or obligation prescribed in this subchapter upon the entry of a valid court order or valid final order of the Arkansas State Claims Commission establishing a judgment against any state agency, board, department, or commission or when a settlement agreement has been reached arising from third-party claims against any state agency, board, department, or commission when the state agency, board, department, or commission is determined to be the owner or operator.

(h) Nothing in this subchapter shall be construed to abrogate or waive the provisions of Arkansas Constitution, Article 5, § 20.

(i)(1) An owner or operator who considers himself or herself injured in his or her business, person, or property by a final decision of the director or the director's delegatee under this subchapter may appeal the decision to the Arkansas Pollution Control and Ecology Commission within thirty (30) days after the date of the final decision of the director or the director's delegatee.

(2) The procedures of the division and the Arkansas Pollution Control and Ecology Commission for issuance of rules, conduct of hearings, notice, power of subpoena, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-202, 8-4-210 — 8-4-214, and 8-4-218 — 8-4-229, and in rules applicable to administrative procedures of the division and the Arkansas Pollution Control and Ecology Commission to the extent they are not in conflict with the provisions of this subchapter.

History. Acts 1989, No. 173, § 3; 1989 (3rd Ex. Sess.), No. 65, §§ 3, 4; 1991, No. 615, § 1; 1993, No. 951, § 4; 1995, No. 1054, § 2; 1997, No. 641, § 3; 2001, No. 206, § 1; 2003, No. 1114, § 2; 2013, No.

406, § 1; 2019, No. 315, § 669; 2019, No. 910, §§ 2809-2811.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" twice in (i)(2).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b) and (c); and substituted "division" for "department" throughout the section.

8-7-906. Petroleum environmental assurance fee.

(a) There is established a petroleum environmental assurance fee to be paid, except as provided in subsection (c) of this section, on each gallon of motor fuel or distillate special fuel purchased in or imported into this state.

(b) The fee shall be paid by the first distributor or supplier receiving fuel from a terminal in this state, or, if the fuel will never be stored in a terminal in this state, then by the distributor or supplier who first imports fuel into this state by tank truck.

(c) Exchanges of fuels on a gallon-for-gallon basis within a terminal or fuels exported from this state are exempt from the fee.

(d) Proof of payment shall be provided to the owner or operator.

(e) The fee shall be remitted to the Secretary of the Department of Finance and Administration at the time, in the manner, and on forms prescribed by the secretary and may be collected and remitted at the same time and in the same manner as the motor fuels tax and special motor fuels tax under § 26-55-101 et seq. and the Special Motor Fuels Tax Law, § 26-56-101 et seq.

(f)(1) For so long as no bonds for the benefit of the Petroleum Storage Tank Trust Fund are issued and outstanding, the fees collected under this subchapter shall be deposited into the Petroleum Storage Tank Trust Fund.

(2) The applicable fund balances shall be required to be maintained in perpetuity.

(g)(1) The maximum rate for the fee shall be at a rate of three-tenths of one cent (0.3¢) for each gallon of fuel.

(2)(A) For so long as no bonds for the benefit of the Petroleum Storage Tank Trust Fund are outstanding, the fee shall be collected at the maximum rate. However, when the balance of the Petroleum Storage Tank Trust Fund, as adjusted to reflect the obligations and liabilities of the fund, reaches fifteen million dollars (\$15,000,000), the rate shall drop at the beginning of the next calendar quarter to such rate as the Arkansas Pollution Control and Ecology Commission determines is necessary to maintain a fifteen million dollar (\$15,000,000) adjusted balance.

(B) The rate shall be increased at the beginning of the next calendar quarter when the fund balance, as adjusted to reflect the obligations and liabilities of the Petroleum Storage Tank Trust Fund, drops to twelve million dollars (\$12,000,000) or less and remains at the higher amount, not to exceed three-tenths of one cent (0.3¢), until the adjusted fund balance reaches fifteen million dollars (\$15,000,000).

(3) The commission shall review the Petroleum Storage Tank Trust Fund balance, as adjusted to reflect the obligations and liabilities of the

Petroleum Storage Tank Trust Fund, at least quarterly and report the rate of collection for the fee for the upcoming quarter to the secretary.

(4) During any period when bonds for the benefit of the Petroleum Storage Tank Trust Fund are outstanding, the fee shall be collected at a rate of three-tenths of one cent (0.3¢) for each gallon irrespective of the balance of the Petroleum Storage Tank Trust Fund.

(h)(1) During any period when bonds are outstanding for the benefit of the Petroleum Storage Tank Trust Fund, the fee shall be deposited into the Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund as provided in the Petroleum Storage Tank Trust Fund Bond Financing Act, § 15-5-1201 et seq.

(2) All other fees or moneys collected under this subchapter shall continue to be deposited into the Petroleum Storage Tank Trust Fund.

(i) All fees shall be subject to collection and enforcement of collection under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1989, No. 173, § 4; 1989 (3rd Ex. Sess.), No. 65, §§ 5, 6; 1993, No. 951, § 5; 1995, No. 1054, § 3; 1997, No. 641, § 4; 2005, No. 670, § 1; 2019, No. 910, §§ 3369, 3370.

substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (e); and substituted "secretary" for "director" in (e) and (g)(3).

Amendments. The 2019 amendment

8-7-907. Payments for corrective action.

(a)(1) No payment for corrective action shall be paid from the Petroleum Storage Tank Trust Fund until the owner or operator has expended seven thousand five hundred dollars (\$7,500) on corrective action for the occurrence, except in cases in which the Director of the Division of Environmental Quality is using emergency authority under § 8-7-905(e). It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible.

(2) Owners or operators of underground storage tanks must demonstrate financial responsibility for the seven-thousand-five-hundred-dollar deductible for corrective actions.

(b) Payment for corrective action shall not exceed one million five hundred thousand dollars (\$1,500,000) per occurrence.

(c) All payments for corrective action expenses of the owner or operator shall be made only following proof that:

(1)(A) At the time of discovery of the release the owner or operator had paid all fees required under state law or rules applicable to petroleum storage tanks.

(B) If the petroleum storage tank is an aboveground storage tank, the owner or operator may be eligible for reimbursement if the aboveground storage tank is registered under § 8-7-813 and all fees required under state law or rule have been paid;

(2) The corrective action expenses submitted for reimbursement consist of items and amounts that are in accord and compliant with Division of Environmental Quality rules; and

(3) The owner or operator cooperated fully with the division in corrective action to address the release.

(d) Payment for corrective action may be denied if the storage tank owner or operator fails to report a release as required by rule promulgated by the Arkansas Pollution Control and Ecology Commission, and the failure to report the release causes a delay in the corrective action that contributes to an adverse impact to the environment.

(e)(1) The commission may provide through rule for interim payments for corrective action.

(2) Interim payments shall be subject to these limitations:

(A) Proof of compliance with the requirements of subdivisions (c)(1)-(3) of this section must be provided;

(B) Specific assurances must be provided that an approved corrective action plan, division directive, or order is being implemented and followed to date; and

(C)(i) Interim payments shall consist of payment of an amount not to exceed ninety percent (90%) of one million five hundred thousand dollars (\$1,500,000).

(ii) The remaining ten percent (10%) shall be released only upon final payment for corrective action concerning the occurrence.

(f)(1) In the event moneys are expended from the fund for corrective action and the owner or operator was not at the time of the occurrence eligible to receive reimbursement for corrective action, as defined by this subchapter and rules promulgated under this subchapter, the division may recover from the owner or operator the amount of moneys expended from the fund for corrective action by filing an action in the appropriate circuit court or by using the administrative procedures set forth in § 8-7-804.

(2)(A) The division also has a right of subrogation:

(i) To any insurance policies in existence at the time of the occurrence to the extent of any rights the owner or operator of a site may have had under that policy; and

(ii) Against any third party who caused or contributed to the occurrence.

(B) The right of subrogation shall apply to sites where corrective action is taken by:

(i) Owners or operators; or

(ii) The division.

(C) As used in this subsection, "third party" does not include a former owner or operator of the site where corrective action is taken.

(g)(1) Unknown petroleum storage tanks that have satisfied the requirements of subdivisions (c)(1)-(3) of this section shall be eligible for reimbursement for corrective action as provided by this section if:

(A) The unknown petroleum storage tank is discovered while removing, upgrading, or replacing a petroleum storage tank meeting the requirements of subsection (c) of this section or while performing petroleum investigation or corrective action activities required by federal or state laws and the petroleum storage tank meeting the

requirements of subsection (c) of this section is located on the same property or facility; or

(B) The unknown petroleum storage tank is located on a right-of-way purchased by a city, county, or state governmental agency or entity and is discovered during construction in such a right-of-way.

(2) Eligibility for reimbursement of unknown petroleum storage tanks will be conditioned on the payment of three hundred seventy-five dollars (\$375) to the division.

(h) If the owner or operator is found to have been in noncompliance with any state laws and rules and federal laws and regulations relating to storage tanks at the time of the occurrence, the division may assess a penalty in accordance with its applicable policies and procedures.

(i)(1) An owner or operator determined to be eligible for payment for corrective action for a release from a qualified storage tank or the division may transfer the eligibility to a subsequent owner or operator of the qualified storage tank if the division determines that the subsequent owner or operator has the financial and legal capacity to complete the corrective action and the subsequent owner or operator agrees in writing to assume responsibility for corrective action.

(2) A transfer under subdivision (i)(1) of this section shall not affect the potential liability of the owner or operator for undertaking any required corrective action.

(3) The removal of the storage tank after initiation of corrective action shall not bar the transfer of eligibility as provided in subdivision (i)(1) of this section.

(j)(1) A lender or secured creditor that holds ownership in a storage tank primarily to protect a security interest on the storage tank or the facility on which it is located, or both, is eligible for payment for corrective action if the lender or secured creditor assumes responsibility for completing the corrective action of a release from a qualified storage tank.

(2) If an owner or operator is performing corrective action to the division's satisfaction, a lender or secured creditor is not eligible to assume responsibility for corrective action or to receive payment for corrective action.

(3) Subdivisions (j)(1) and (2) of this section do not affect the liability of the owner or operator for undertaking any required corrective action.

(k)(1) The commission shall provide through rule a procedure under which an owner or operator or a consultant can be eligible for payment for the purchase of equipment needed for undertaking corrective action.

(2) The procedure adopted under subdivision (k)(1) of this section shall include without limitation:

(A) Depreciation schedules;

(B) Reasonable rent as appropriate;

(C) Evaluation of residual value of equipment; and

(D) Providing for reversion of equipment to the division if the responsibility for the maintenance or payment for the equipment is not met.

(3) The eligibility for payment of a consultant applies only to this subsection.

History. Acts 1989, No. 173, § 7; 1989 (3rd Ex. Sess.), No. 65, §§ 8, 9; 1993, No. 951, § 6; 1997, No. 642, § 1; 1997, No. 1027, § 1; 1999, No. 599, § 1; 2001, No. 1471, §§ 4, 5; 2003, No. 1114, § 3; 2005, No. 670, § 2; 2005, No. 1678, § 1; 2009, No. 282, §§ 4, 5; 2011, No. 809, § 1; 2013, No. 406, § 2; 2015, No. 699, § 1; 2017, No. 257, § 1; 2017, No. 584, § 2; 2019, No. 315, §§ 670-674; 2019, No. 910, §§ 2812-2820.

Amendments. The 2019 amendment

by No. 315 substituted “rules” for “regulations” in (c)(1)(A), (c)(2), and (f)(1); substituted “rule” for “regulation” in (c)(1)(B) and (d); deleted “and regulation” following “rule” in (e)(1) and (k)(1); and inserted “laws and rules” in (h).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1) and (c)(2); and substituted “division” for “department” throughout the section.

8-7-908. Third-party claims.

(a)(1) No payment to any owner or operator against whom a third-party claim is brought for compensatory damages shall be paid from the Petroleum Storage Tank Trust Fund until the owner or operator has expended seven thousand five hundred dollars (\$7,500) on third-party claims for the occurrence, except in cases in which:

(A) The Director of the Division of Environmental Quality is using his or her emergency authority under § 8-7-905(e); or

(B) The owner or operator has been discharged under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., or is determined by a court to be insolvent.

(2) It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible.

(3) Owners and operators of underground storage tanks must demonstrate financial responsibility for the seven-thousand-five-hundred-dollar deductible for third-party liability costs.

(b) Payment for third-party claims shall not exceed one million dollars (\$1,000,000) per occurrence.

(c) All payments for third-party claims shall be made only following proof that:

(1) At the time of the occurrence, the owner or operator was in substantial compliance with the financial responsibility requirements;

(2) At the time of discovery of the release, the owner or operator had paid all fees required under state law or regulations applicable to petroleum storage tanks; and

(3) A valid final court order or valid final order of the Arkansas State Claims Commission establishing a judgment against the owner or operator for compensatory damages caused by an accidental release from a qualified storage tank has been entered.

(d)(1)(A) Any owner or operator against whom a third-party claim is filed in court or in the Arkansas State Claims Commission shall give written notice of the claim to the Division of Environmental Quality no later than twenty (20) days after service of summons or receipt of

notification of the claim from the Arkansas State Claims Commission.

(B) As a condition of eligibility, an owner or operator shall cooperate with and assist the division and, if applicable, the Attorney General's office in connection with the third-party claim.

(C) At a minimum, the cooperation shall include active participation by the owner or operator throughout the litigation and providing assistance as required by the division or the Attorney General's office during resolution of a third-party claim.

(D) In determining compliance with subdivisions (d)(1)(B) and (C) of this section, the director shall consider the owner's or operator's financial condition.

(2) Upon receipt of the notice, the division shall immediately notify the Attorney General, who shall have the right to intervene in any such lawsuit or proceeding in order to protect the interests of the state in the fund.

(3) Payment of third-party claims from the fund may be denied for any owner or operator who fails to give the division notice as required in this subsection.

(e)(1) The Arkansas Pollution Control and Ecology Commission may provide through rules for payments for third-party claims under settlement agreements between the parties without entry of a final court order or Arkansas State Claims Commission order.

(2) Settlement payments for third-party claims shall be subject to these limitations:

(A) Proof of compliance with the requirement of subdivisions (c)(1) and (2) of this section must be provided;

(B) Specific assurances, such as dismissal with prejudice of the cause of action, that payment shall release the owner or operator from all future liability to the third-party claimant for this occurrence must be provided; and

(C) The director must determine that litigation would result in costs to the fund which would exceed the settlement amount and, therefore, it would be in the best interests of the fund to pay the settlement amount.

(f)(1) In the event moneys are expended from the fund for third-party claims and the owner or operator was not at the time of the occurrence in substantial compliance, as defined by this subchapter and rules promulgated under this subchapter, the division may recover from the owner or operator the amount of moneys expended from the fund for the third-party claim by filing an action in the appropriate circuit court or by using the administrative procedures set forth in § 8-7-804.

(2)(A) The division also has a right of subrogation:

(i) To any insurance policies in existence at the time of the occurrence to the extent of any rights the owner or operator of a site may have had under that insurance policy; and

(ii) Against any third party who caused or contributed to the occurrence.

(B) The right of subrogation shall apply to sites where corrective action is taken by:

- (i) Owners or operators; or
- (ii) The division.

(C) As used in this subsection, “third party” does not include a former owner or operator of the site where corrective action is taken.

(g)(1) Unknown petroleum storage tanks that have satisfied the requirements of subdivision (c)(3) of this section shall be eligible for reimbursement for third-party claims as provided by this section if:

(A) The unknown petroleum storage tank is discovered while removing, upgrading, or replacing a petroleum storage tank meeting the requirements of subsection (c) of this section or while performing petroleum investigation or corrective action activities required by federal or state laws and the petroleum storage tank meeting the requirements of subsection (c) of this section is located on the same property or facility; or

(B) The unknown petroleum storage tank is located on a right-of-way purchased by a city, county, or state governmental agency or entity and is discovered during construction in the right-of-way.

(2) Eligibility for reimbursement of unknown petroleum storage tanks will be conditioned on the payment of three hundred seventy-five dollars (\$375) to the division.

(h)(1) An owner or operator determined to be eligible for payment for third-party claims for a release may transfer the eligibility to an owner or operator that acquires the storage tank if the division determines that the subsequent owner or operator has the financial and legal capacity and has assumed in writing the responsibility for third-party liability.

(2) A transfer under subdivision (h)(1) of this section does not affect the potential liability of the owner or operator for payment of compensatory damages to a third party.

(3) The removal of the storage tank after initiation of corrective action shall not bar the transfer of eligibility as provided in subdivision (h)(1) of this section.

History. Acts 1989, No. 173, § 8; 1989 (3rd Ex. Sess.), No. 65, §§ 10-13; 1993, No. 951, § 7; 1997, No. 641, § 5; 1997, No. 642, § 2; 1997, No. 1027, § 2; 1999, No. 599, § 2; 2003, No. 1114, §§ 4-6; 2005, No. 1678, § 2; 2011, No. 809, § 2; 2013, No. 406, § 3; 2019, No. 315, §§ 675, 676; 2019, No. 910, §§ 2821-2825.

Amendments. The 2019 amendment

by No. 315 deleted “or regulations” following “rules” in (e)(1); and substituted “rules” for “regulations” in (f)(1).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1)(A) and (d)(1)(A); and substituted “division” for “department” throughout the section.

8-7-909. Confidential treatment of information.

(a) Any records, reports, or information obtained by the Division of Environmental Quality, the Department of Energy and Environment, or the division’s or department’s employees in the administration of this

subchapter, except release data, shall be kept confidential upon a showing satisfactory to the Director of the Division of Environmental Quality that the records, reports, or information would constitute a trade secret under § 4-75-601 et seq.

(b) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing claim of confidentiality to other officers or employees of the state or of the United States if the owner or operator of the facility to which the information pertains is informed of the transmittal and if the information has been acquired by the division under the provisions of this subchapter.

(c) The provisions of this section shall not be construed to limit the division's authority to release confidential information during emergency situations.

(d) Any violation of this section is a Class A misdemeanor.

History. Acts 1993, No. 951, § 8; 2019, No. 693, § 24; 2019, No. 910, § 2826.

Amendments. The 2019 amendment by No. 693 substituted "is a Class A" for "shall be unlawful and shall constitute a" in (d).

The 2019 amendment by No. 910, in (a), substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" twice and inserted "the Department of Energy and Environment" and "division's or"; substituted "division" for "department" in (b); and substituted "division's" for "department's" in (c).

SUBCHAPTER 10 — PUBLIC EMPLOYEES' CHEMICAL RIGHT TO KNOW ACT

SECTION.

- 8-7-1003. Definitions.
- 8-7-1004. Duties of public employers.
- 8-7-1006. Material safety data sheets.
- 8-7-1007. Workplace chemical lists.
- 8-7-1008. Employee information and training.
- 8-7-1009. Outreach activities of the director.

SECTION.

- 8-7-1010. Rights of public employees.
- 8-7-1011. Rulemaking.
- 8-7-1012. Trade secrets.
- 8-7-1013. Complaints and investigations.
- 8-7-1014. Enforcement.
- 8-7-1015. Cause of action — Attorney's fees.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-7-1003. Definitions.

(a) As used in this subchapter:

(1) “Chemical manufacturer” means an employer with a workplace where chemicals are produced for use or distribution;

(2) [Repealed.]

(3) “Distributor” means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers;

(4) “Exposure” or “exposed” means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact, or absorption, etc.), and includes potential, e.g., accidental or possible, exposure;

(5) “Hazard Communication Standard” means the Hazard Communication Standard adopted by the United States Occupational Safety and Health Administration and codified in the Code of Federal Regulations at 29 C.F.R. § 1910.1200, as of July 1, 1991;

(6) “Hazardous chemical” means any element, chemical compound, or mixture of elements or compounds which is a physical hazard or a health hazard as defined by the Hazard Communication Standard;

(7) “Label” or “labeling” means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals;

(8) “Material safety data sheet” means written or printed material concerning a hazardous chemical which is prepared in accordance with the Hazard Communication Standard;

(9)(A) “Public employee” means any employee of a public employer who may be exposed to hazardous chemicals in the workplace under normal operating conditions or foreseeable emergencies.

(B) Office workers and nonresident management are not generally included unless their job performance routinely involves potential exposure to hazardous chemicals;

(10) “Public employer” means the State of Arkansas and each political subdivision thereof, as defined in § 21-5-603(b);

(11) “Trade secret” is defined in accordance with § 4-75-601(4);

(12) “Work area” means a room or defined space in a workplace where hazardous chemicals are produced or used and where public employees are present;

(13) “Workplace” means an establishment, job site, or project at one (1) geographical location containing one (1) or more work areas under a public employer’s control or direction; and

(14) “Workplace chemical list” means a list of hazardous chemicals in a workplace developed pursuant to § 8-7-1007.

(b) All other definitions of the Hazard Communication Standard as they exist on the date of enactment of this subchapter are hereby adopted and incorporated by reference.

History. Acts 1991, No. 556, § 3; 1991, No. 1172, § 3; 2019, No. 910, § 5267.

Amendments. The 2019 amendment repealed (a)(2).

8-7-1004. Duties of public employers.

Each public employer shall do the following:

- (1) Post adequate notice, as provided by the Director of the Division of Labor, at locations where notices are normally posted, informing public employees about their rights under this subchapter;
- (2) Ensure proper hazardous chemical labeling in accordance with § 8-7-1005;
- (3) Maintain and make available material safety data sheets in accordance with § 8-7-1006;
- (4) Compile and maintain a workplace chemical list in accordance with § 8-7-1007;
- (5) Provide public employee information and training in accordance with § 8-7-1008; and
- (6) Handle trade secrets in accordance with § 8-7-1012.

History. Acts 1991, No. 556, § 4; 1991, No. 1172, § 4; 2019, No. 910, § 5268. substituted “Division of Labor” for “Department of Labor” in (1).

Amendments. The 2019 amendment

8-7-1006. Material safety data sheets.

(a) Chemical manufacturers and distributors shall provide public employers which purchase a hazardous chemical from them with an appropriate material safety data sheet prior to or with their initial shipment of the hazardous chemical and with the first shipment after the material safety data sheet for the hazardous chemical is updated.

(b) Public employers shall maintain the most current material safety data sheet received from chemical manufacturers or distributors for each hazardous chemical in the workplace. If a material safety data sheet has not been provided by the chemical manufacturer or distributor at the time the hazardous chemicals are received at the workplace, the public employer shall request one in writing from the chemical manufacturer or distributor within five (5) business days.

(c) Material safety data sheets shall be readily available upon request to public employees and their designated representatives.

(d)(1) If a material safety data sheet for a hazardous chemical is not readily available upon request, a public employee or his or her designated representative may submit a written request for the material safety data sheet to the public employer. The public employer, within three (3) business days, either shall furnish a copy of the requested material safety data sheet to the requester or, if the requested material safety data sheet is not in the public employer’s possession, shall demonstrate to the requester that the public employer has made an effort to obtain the material safety data sheet from the distributor, chemical manufacturer, or other source.

(2) If after two (2) weeks from receipt of the request the public employer has not furnished the requester with the requested material safety data sheet, the public employer shall not require the public employee to work with the hazardous chemical for which the material

safety data sheet was requested until the material safety data sheet is furnished, unless:

(A) The manufacturer of the substance for which the material safety data sheet was requested furnishes a written statement that the substance is not a hazardous chemical as defined in § 8-7-1003;

(B) The public employer can demonstrate to the public employee that the material safety data sheet cannot be obtained through no fault of the public employer; or

(C) The public employer can demonstrate to the public employee that the material safety data sheet will be furnished by a date specified by the public employer within one (1) additional week, provided that the public employee shall not be required to work with the hazardous chemical if the material safety data sheet is not furnished by the date specified.

(3) If a public employee declines to work with a hazardous chemical as authorized by this subsection, he or she shall not be penalized. Reassignment of a public employee to other work at equal pay and benefits shall not be considered a penalty under this subsection.

(e) A public employer, chemical manufacturer, or distributor shall provide a copy of a material safety data sheet to the Director of the Division of Labor upon request.

(f) A public employer, chemical manufacturer, or distributor may meet the requirements of this section with respect to a hazardous chemical which is a mixture either by providing a material safety data sheet for each element or compound in the mixture which is a hazardous chemical or by providing a material safety data sheet for the mixture itself. If more than one (1) mixture has the same element or compound, only one (1) material safety data sheet for that element or compound is necessary.

History. Acts 1991, No. 556, § 6; 1991, No. 1172, § 6; 2019, No. 910, § 5269. substituted "Division of Labor" for "Department of Labor" in (e).

Amendments. The 2019 amendment

8-7-1007. Workplace chemical lists.

(a) Each public employer shall compile and maintain a workplace chemical list which shall contain the following information for each hazardous chemical normally used, generated, or stored in the workplace in an amount equal to or greater than fifty-five gallons (55 gals.) or five hundred pounds (500 lbs.):

(1) The chemical name or common name used on the material safety data sheet or the container label;

(2) The Chemical Abstracts Service number for such hazardous chemical if such Chemical Abstracts Service number is included on the material safety data sheet; and

(3) The work area or workplace in which the hazardous chemical is normally used, generated, or stored.

(b) Each public employer shall update the workplace chemical list with the Director of the Division of Labor as necessary, but in any case by July 1 of each year.

(c) A public employer may meet the requirements of this section with respect to a hazardous chemical which is a mixture either by identifying on the workplace chemical list each element or compound in the mixture which is a hazardous chemical or by identifying on the workplace chemical list the mixture itself. If more than one (1) mixture has the same element or compound, only one (1) listing of the element or compound is necessary.

History. Acts 1991, No. 556, § 7; 1991, No. 1172, § 7; 2019, No. 693, § 25; 2019, No. 910, § 5270.

A.C.R.C. Notes. Acts 2019, No. 910, § 5270, amended subsection (b) of this section to insert “or the Division of Labor” following “Labor” in the phrase “shall file the workplace chemical list with the Director of the Department of Labor no later than ninety (90) days after July 1, 1991”. However, Acts 2019, No 693, § 25, specifically repealed this phrase.

Amendments. The 2019 amendment by No. 693, in (b), deleted “shall file the workplace chemical list with the Director of the Department of Labor no later than ninety (90) days after July 1, 1991, and” following “Each public employer”, inserted “with the Director of the Division of Labor”, and substituted “each year” for “each subsequent year”.

The 2019 amendment by No. 910 inserted “or the Division of Labor” following “Department of Labor” in (b).

8-7-1008. Employee information and training.

(a) Each public employer shall provide an information and training program for its public employees as defined in § 8-7-1003. Additional instruction shall be provided whenever a new hazard is introduced into their work area or whenever new and significant information is received by the public employer concerning the hazards of a chemical. New or newly assigned public employees shall be provided training before working in a work area containing hazardous chemicals.

(b)(1) The information and training program provided pursuant to this section shall be developed in accordance with rules to be promulgated by the Director of the Department of Labor or the Division of Labor pursuant to § 8-7-1011.

(2) The rules shall include, at a minimum, requirements concerning:

(A) Information on interpreting labels and material safety data sheets and the relationship between these two (2) methods of hazard communication;

(B) The location and availability of the workplace chemical list and material safety data sheets;

(C) Any operations in a public employee’s work area where hazardous chemicals are present;

(D) The physical and health hazards of the hazardous chemicals in the work area;

(E) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area, such as monitoring conducted by the public employer, continuous monitoring

devices, visual appearance or odor of hazardous chemicals when being released, etc.;

(F) The measures public employees can take to protect themselves from these hazards, including specific procedures the public employer has implemented to protect public employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used;

(G) Frequency of training;

(H) General safety instructions on the handling, cleanup, and disposal of hazardous chemicals; and

(I) Public employees' rights under this subchapter.

(c) Training programs addressing each of the requirements of subsection (b) of this section and conducted in full compliance with Title III of the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 11001 et seq., shall be deemed to meet the requirements of this section.

(d) Public employers shall keep a record of the dates of training sessions given to their public employees.

(e) The information and training program required under this section may be conducted with the assistance of the director pursuant to § 8-7-1009.

(f) The director shall have authority to promulgate rules in accordance with § 8-7-1011:

(1) To exempt public employers from providing the information and training otherwise required by this section to public employees with special skills and knowledge concerning hazardous chemicals, if such special skills and knowledge would make the information and training unnecessary; and

(2) To require public employers to provide refresher training for public employees in workplaces or in circumstances in which the director reasonably determines such refresher training to be necessary and appropriate.

History. Acts 1991, No. 556, § 8; 1991, No. 1172, § 8; 2019, No. 315, §§ 677, 678; 2019, No. 693, §§ 26, 27; 2019, No. 910, § 5271.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b)(1) and the introductory language of (b)(2); deleted "within six (6) months after July 1, 1991" at the end of

(b)(1); and deleted "and regulations" following "rules" in the introductory language of (f).

The 2019 amendment by No. 693 deleted "within six (6) months after July 1, 1991" from the end of (b)(1); and rewrote (e) to delete obsolete language.

The 2019 amendment by No. 910 inserted "or the Division of Labor" in (b)(1).

8-7-1009. Outreach activities of the director.

(a) The Director of the Division of Labor shall develop and give each public employer a suitable form of notice providing public employees with information regarding their rights under this subchapter.

(b) The director shall develop and maintain a general information and training assistance program to aid public employers. The general

information and training assistance program shall be made available to all public employers. As part of the general information and training assistance program, the director may develop and distribute a supply of informational leaflets on public employers' duties, public employees' rights, and the effects of hazardous chemicals.

(c) The director may contract with state universities or other public or private organizations to develop and implement the outreach program.

History. Acts 1991, No. 556, § 9; 1991, No. 1172, § 9; 2019, No. 693, § 28; 2019, No. 910, § 5272.

Amendments. The 2019 amendment by No. 693, in (b), substituted "The general information and training assistance program" for "Such information and assistance" in the second sentence, substituted

"general information and training assistance program" for "program" in the third sentence, and deleted the former last sentence.

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (a).

8-7-1010. Rights of public employees.

(a) Public employees who may be exposed to hazardous chemicals shall be informed of such exposure and shall have access to the workplace chemical list, material safety data sheets for the hazardous chemicals on the workplace chemical list, and information and training as provided in this subchapter.

(b) No public employer shall discharge or cause to be discharged or otherwise discipline or discriminate against a public employee because the public employee has requested information, filed a complaint, assisted an inspector of the Director of the Division of Labor, or instituted or caused to be instituted any complaint or proceeding under or related to this subchapter or has testified or is about to testify in any such proceeding or has exercised any rights afforded by this subchapter on behalf of the public employee or other public employees, nor shall any pay, position, seniority, or other benefits to which the public employee may be entitled be lost because the public employee exercised rights afforded by this subchapter.

(c) Any waiver of the benefits or requirements of this subchapter shall be against public policy and shall be null and void. Any public employer's request or requirement that a person waive any rights under this subchapter as a condition of or in connection with employment shall constitute a violation.

History. Acts 1991, No. 556, § 10; 1991, No. 1172, § 10; 2019, No. 910, § 5273.

Amendments. The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (b).

8-7-1011. Rulemaking.

(a) The Director of the Division of Labor may promulgate rules in accordance with the provisions of §§ 11-2-110, 11-2-112, and 11-2-113 to implement the provisions of this subchapter. This authority shall

include, but not be limited to, the authority to implement changes corresponding to future amendments to the Hazard Communication Standard to maintain consistency between this subchapter and the Hazard Communication Standard.

(b) The director shall promulgate rules requiring public employers to carry out information and training programs for their public employees and specifying the minimum content of education and training programs as provided in § 8-7-1008.

History. Acts 1991, No. 556, § 11; 1991, No. 1172, § 11; 2019, No. 315, § 679; 2019, No. 693, § 29; 2019, No. 910, § 5274.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in the first sentence of (a); substituted “rules” for “regulations” in (b); and made a stylistic change.

The 2019 amendment by No. 693 deleted “within six (6) months after July 1, 1991” preceding “requiring public employers” in (b).

The 2019 amendment by No. 910 substituted “Division of Labor” for “Department of Labor” in (a).

8-7-1012. Trade secrets.

(a) A public employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from a material safety data sheet or workplace chemical list only if all the following conditions are met:

(1) The claim that the information indicates that the specific chemical identity is being withheld as a trade secret;

(2) The material safety data sheet or the chemical indicates that the specific chemical identity is being withheld as a trade secret;

(3) All information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed; and

(4) The specific chemical identity is made available to health professionals, employees, and their designated representatives under the same conditions as are set out in the Hazard Communication Standard, 29 C.F.R. § 1910.1200(i)(2)-(7), provided, the information disclosable to the United States Occupational Safety and Health Administration under the Hazard Communication Standard shall also be disclosable to the Director of the Division of Labor.

(b) The director, upon his or her initiative or upon request by a public employee, designated representative, or public employer, shall request any or all of the data substantiating the trade secret claim to determine whether the claim is valid. The director shall protect from disclosure all information coming into his or her possession that is marked as confidential and shall return all information so marked at the conclusion of his or her determination.

(c) Any information marked confidential pursuant to subsection (b) of this section shall not be disclosed during any administrative or judicial proceeding held pursuant to this section. Administrative hearings held pursuant to this section shall not be open to the public, but

otherwise shall be held in a manner consistent with that provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for hearings in contested cases. The proponent of disclosure shall also have the right to be heard.

(d) No employee of the State of Arkansas shall disclose any information designated as a trade secret other than within the provisions of this subchapter.

(e) Nothing in this section shall be construed as requiring the disclosure under any circumstances of process or percentages of mixture information that is a trade secret.

History. Acts 1991, No. 556, § 12; 1991, No. 1172, § 12; 2019, No. 910, § 5275. **Amendments.** The 2019 amendment substituted “Division of Labor” for “Department of Labor” in (a)(4).

8-7-1013. Complaints and investigations.

(a) Complaints received orally or in writing from public employees, their designated representatives, or public employers related to alleged violations of this subchapter shall be investigated in a timely manner by the Director of the Division of Labor.

(b) Officers or duly designated representatives of the director shall have the right of entry into any workplace or work area of a public employer during normal business hours to inspect and investigate complaints within reasonable limits and in a reasonable manner.

(c) The director shall have the same powers, duties, and authority to administer and enforce the provisions of this subchapter as are contained in §§ 11-2-108, 11-2-115, 11-2-116, and 11-2-118. Provided, however, that if there is a conflict between the provisions of this subchapter and the provisions of §§ 11-2-108, 11-2-115, 11-2-116, and 11-2-118, the provisions of this subchapter shall prevail.

History. Acts 1991, No. 556, § 13; 1991, No. 1172, § 13; 2019, No. 910, § 5276. **Amendments.** The 2019 amendment substituted “Division of Labor” for “Department of Labor” in (a).

8-7-1014. Enforcement.

(a) If the Director of the Division of Labor determines that a public employer has violated a provision of this subchapter, the director shall issue an order to the official responsible for performing the duties required by this subchapter directing that official to cease and desist the act or omission constituting the violation. Such an order shall constitute prima facie evidence of a violation in any enforcement action filed pursuant to § 8-7-1015.

(b) If the director determines that a public employer has violated § 8-7-1008 relating to public employee information and training and within sixty (60) days of issuance of a cease and desist order the public employer has not remedied the violation, the director may conduct a

program or programs to remedy the violation and require such public employer to reimburse the director for the cost of doing so.

(c) Violation of this subchapter by a public employer shall be cause for adverse personnel action against the supervisor or supervisors responsible for the violation, including, but not limited to, suspension, demotion, withholding of annual career service recognition payments, or, in the case of serious and repeated violations, termination. Issuance of a cease and desist order by the director shall not be a prerequisite for such adverse personnel action, but such action shall only be taken in accordance with the civil service laws and rules.

History. Acts 1991, No. 556, § 14; 1991, No. 1172, § 14; 2019, No. 315, § 680; 2019, No. 910, § 5277.

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (a).

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in the second sentence of (c).

8-7-1015. Cause of action — Attorney's fees.

(a) Any citizen denied the rights granted to him or her by this subchapter may commence a civil action against a public employer or responsible official of a public employer in the Pulaski County Circuit Court or the circuit court of the residence of the aggrieved party, if an agency of the state is involved, or any of the circuit courts of the appropriate judicial districts when any other public employer is involved. Issuance of a cease and desist order by the Director of the Division of Labor shall not be a prerequisite to the commencement of such an action.

(b) Upon written application of the person denied the rights provided for in this subchapter or any interested party, the circuit court having jurisdiction shall fix a day the petition is to be heard within seven (7) days of the date of the application of the petitioner and shall hear and determine the case.

(c) The circuit courts shall have jurisdiction to restrain violations of this subchapter and to order all appropriate relief, including, but not limited to, the disclosure of chemical information, the rehiring or reinstatement of public employees discriminated against because of their exercise of their rights under this subchapter, and the payment of any compensation such public employees actually lost as a result of such violations.

(d) Those who refuse to comply with the orders of the circuit court shall be found guilty of contempt of court.

(e) In any action to enforce the rights granted by this subchapter or in any appeal therefrom, the court shall assess against the defendant reasonable attorney's fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed, unless the court finds that the position of the defendant was substantially justified or that other circumstances make an award of those expenses unjust. However, no expenses shall be assessed against the State of Arkansas

or any of its agencies or departments. If the defendant has substantially prevailed in the action, the court may assess expenses against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.

History. Acts 1991, No. 556, § 15; 1991, No. 1172, § 15; 2019, No. 910, § 5278.

Amendments. The 2019 amendment substituted “Division of Labor” for “Department of Labor” in (a).

SUBCHAPTER 11 — VOLUNTARY CLEANUP

SECTION.
8-7-1101. Declaration of policy.
8-7-1102. Definitions.

SECTION.
8-7-1103. Division’s authority.
8-7-1104. Voluntary cleanup process.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-7-1101. Declaration of policy.

The General Assembly finds and declares as follows:

- (1) The redevelopment of abandoned industrial, commercial, or agricultural sites or abandoned residential property should be encouraged as a sound land use management policy to prevent the needless development of prime farmland, open spaces, and natural and recreation areas and to prevent urban sprawl;
- (2) The redevelopment of abandoned sites should be encouraged so that these abandoned sites can be returned to useful, tax-producing properties to protect existing jobs and provide new job opportunities;
- (3) Persons interested in redeveloping abandoned sites should have a method of determining what their legal liabilities and cleanup responsibilities will be as they plan the reuse of abandoned sites;
- (4) Incentives should be put in place to encourage prospective purchasers to voluntarily develop and implement cleanup plans of abandoned sites without the need for adversarial enforcement actions by the Division of Environmental Quality;
- (5) The division now routinely determines, through its permitting policies, when contamination will and will not pose unacceptable risks

to public health or the environment, and similar concepts are used in establishing cleanup policies for abandoned sites;

(6) Parties and persons responsible under the law for pollution at abandoned sites should perform remedial responses which are fully consistent with existing requirements;

(7) As an incentive to promote the redevelopment of abandoned industrial sites, persons not responsible for preexisting pollution at or contamination on abandoned industrial sites should meet alternative cleanup requirements if they acquire title after the nature of conditions at the abandoned industrial site has been disclosed and declare and commit to a specified future land use of the subject abandoned industrial site; and

(8)(A) Property transactions at times necessitate title acquisition prior to completion of the actions contemplated at § 8-7-1104(b)-(d) by persons not previously involved with the abandoned site or otherwise considered responsible parties for environmental conditions at an abandoned site.

(B) These persons should not be foreclosed from participation under the procedures enacted under this subchapter.

(C) Therefore, these persons, at the discretion of the Director of the Division of Environmental Quality, may submit a letter of intent that will set forth the persons' desire to purchase the abandoned site and retain their eligibility for participation in the voluntary cleanup program established by this subchapter.

History. Acts 1997, No. 1042, § 1; 1999, No. 1164, § 108; 2001, No. 164, § 1; 2005, No. 1164, § 1; 2019, No. 910, § 2827.

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (4); and substituted "division" for "department" in (5).

Amendments. The 2019 amendment

8-7-1102. Definitions.

(a) As used in this subchapter:

(1) "Abandoned site" means a site on which industrial, commercial, or agricultural activity occurred and for which no responsible person can reasonably be pursued for a remedial response to clean up the site or residential property or when the Division of Environmental Quality determines it is in the best interest of the citizens of Arkansas to promote redevelopment under this subchapter while continuing to pursue the responsible party or parties;

(2) "Implementing agreement" means a plan, order, memorandum of agreement, or other enforceable document issued by the division under provisions of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., the Remedial Action Trust Fund Act, § 8-7-501 et seq., or this subchapter, to implement the voluntary cleanup process described in § 8-7-1104;

(3) "Industrial, commercial, or agricultural activity" means commercial, manufacturing, agricultural, or any other activity done to further the development, manufacturing, or distribution of goods and services,

as well as soil cultivation and crop or livestock production, including, but not limited to, research and development, warehousing, shipping, transport, remanufacturing, repair, and maintenance of commercial machinery and equipment;

(4) "Property" means property and improvements, including:

(A) A facility as defined in 42 U.S.C. § 9601; and

(B) A site as defined in § 8-7-203;

(5) "Prospective purchaser" means a person who expresses a willingness to acquire an abandoned site and is not responsible for any preexisting pollution at or contamination on the abandoned site;

(6) "Residential property" means any real property used as a dwelling or property with four (4) or fewer dwelling units used exclusively for residential use; and

(7)(A) "Site assessment" means the site assessment to establish the baseline level of existing contamination on a site.

(B) At a minimum, the assessment shall identify the location and extent of contamination, the quantity or level of contamination, the type of contamination, the probable source of contamination, and the risk or threat associated with the contamination as described in § 8-7-1104.

(C) The assessment also shall include a description of the intended land use of the site.

(b) Any other terms of this subchapter not expressly defined shall have the same definitions as provided in § 8-7-203, § 8-7-304, or § 8-7-503, unless manifestly inconsistent with the provisions and remedial intent of this subchapter.

History. Acts 1997, No. 1042, § 1; 2001, No. 164, § 2; 2005, No. 1164, § 2; 2019, No. 693, § 30; 2019, No. 910, §§ 2828, 2829.

Amendments. The 2019 amendment by No. 693 deleted "§ 8-7-403 [repealed]" following "§ 8-7-304" in (b).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a)(1); and substituted "division" for "department" in (a)(2).

8-7-1103. Division's authority.

(a) The Division of Environmental Quality shall have authority regarding a voluntary response program to provide the following:

(1) Opportunities for technical assistance for voluntary response actions;

(2) Adequate opportunities for public participation, including prior notice and opportunity for comment in appropriate circumstances, in selecting response actions;

(3) Streamlined procedures to ensure expeditious voluntary response actions;

(4) Oversight and enforcement authorities or other mechanisms that are adequate to ensure that:

(A) Voluntary response actions will protect human health and the environment and be conducted in accordance with applicable federal and state laws; and

(B) If the person conducting the voluntary response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed;

(5) Mechanisms for approval of a voluntary response action plan; and
(6)(A) A requirement for certification or similar documentation from the division to the person conducting the voluntary response action indicating that the response is complete.

(B) This certification shall document any conditions, restrictions, or limitations on the release from liability for contamination existing at the site before the division and the prospective purchaser enter into an implementing agreement.

(b) The division may establish and administer a revolving loan fund to make secured and unsecured loans or grants to eligible participants for the purpose of financing the assessment, investigation, or remedial actions at abandoned industrial, commercial, or agricultural sites, or at abandoned residential property.

History. Acts 1997, No. 1042, § 1; Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a); and substituted “division” for “department” throughout the section.

2003, No. 1193, § 1; 2005, No. 1164, § 3; 2019, No. 910, §§ 2830-2832.
Amendments. The 2019 amendment substituted “Division of Environmental

8-7-1104. Voluntary cleanup process.

(a) This section applies:

(1) To a person who:

(A) Is a prospective purchaser of an abandoned industrial, commercial, or agricultural property with known or suspected contamination;

(B) Is a prospective purchaser of abandoned residential property;

(C) Did not by act or omission cause or contribute to any release or threatened release of a hazardous substance on or from the identified abandoned site or is otherwise considered to be a responsible party pursuant to § 8-7-512(a)(2)-(4); and

(D) Will reuse or redevelop the property for industrial, commercial, agricultural, or residential uses which will sustain or create employment opportunities or otherwise augment the local or state economy and tax base, or both; or

(2) To a person who:

(A) Is not a responsible party pursuant to § 8-7-512(a)(2)-(4);

(B) Submits a letter of intent to participate; and

(C) Subsequently acquires title to an abandoned site prior to completion of an implementing agreement as set forth in subsection (d) of this section.

(b) A comprehensive site assessment shall be completed to establish the baseline of existing contamination on the site.

(c) Following completion of a comprehensive site assessment, the Division of Environmental Quality shall determine whether the site assessment adequately identifies the environmental risks posed by the abandoned site.

(d)(1) The division and the prospective purchaser shall enter into an implementing agreement based on the results of the comprehensive site assessment.

(2) The implementing agreement shall establish cleanup liabilities and obligations for the abandoned site.

(3) The prospective purchaser shall provide notice of the implementing agreement in a newspaper of general circulation that serves the area in which the abandoned site is located.

(4) The notice shall be subject to the approval of the division.

(5) The implementing agreement shall establish the intended use of the property.

(6) The description of the intended use shall identify the abandoned site and the nature of the activity that the prospective purchaser proposes for the abandoned site.

(e) Once the prospective purchaser has acquired legal title to the abandoned site, the purchaser will be responsible to:

(1)(A) Remediate, remove and properly dispose of, or manage, consistent with applicable requirements, any containerized hazardous substances existing on site at the time of purchase, including drummed waste, lagoons, and impoundments and wastes in above-ground and underground tanks, which may pose a threat of release.

(B) Wastes that are disposed or managed on site will remain subject to applicable requirements;

(2) Take all necessary steps as appropriate to prevent migration of hazardous substances beyond the property boundary, considering the factors specified at subsection (h) of this section; and

(3) Remedy any releases of hazardous substances as identified in the comprehensive site assessment required by subsection (b) of this section.

(f) For purposes of subdivision (e)(3) of this section, releases of hazardous substances are those conditions which pose either:

(1)(A) An unacceptable risk, either acute or chronic, to the health of employees or any other person likely to be exposed to the release from the abandoned site, based upon the intended site use described by the prospective purchaser in the comprehensive site assessment and described by the implementing agreement.

(B) A purchaser may not actually use the property in a manner which differs from the intended use identified in the implementing agreement contemplated by subsection (d) of this section, unless the division and purchaser agree to a modification of the implementing agreement; or

(2) An unacceptable risk to degrade either groundwaters or surface waters, or any risk to degrade the extraordinary resource waters of the State of Arkansas.

(g) A remedial action pursuant to subdivision (e)(3) of this section shall eliminate unacceptable risks and prevent degradation of groundwaters and surface waters which would cause the unacceptable risk or degradation, or both, described in subdivision (f)(2) of this section.

(h)(1) The selection of remedial action shall be approved by the division after reasonable notice and after opportunity for hearing and shall become an amendment to the implementing agreement entered into pursuant to subsection (d) of this section.

(2) Selection of a remedial action shall include consideration of the following factors:

(A) The intended and allowable use of the abandoned site;

(B) The ability of the contaminants to move in a form and manner which would result in exposure to humans and the surrounding environment at levels considered to be an unacceptable health risk as described in subdivisions (f)(1) and (2) of this section;

(C) Consideration of the potential environmental risks of proposed alternative remedial action and its technical feasibility, reliability, and cost effectiveness;

(D) When an imminent and substantial endangerment is posed; and

(E) Whether institutional or engineering controls eliminate or partially eliminate the imminent and substantial endangerment or otherwise contain or prevent migration.

(3) Remedial actions pursuant to subdivision (e)(3) of this section are not required to provide for the removal or remediation of the conditions or contaminants causing a release or threatened release on the abandoned site if:

(A) Contaminants pose no unacceptable risk as described in subdivisions (f)(1) and (2) of this section, or if the remedial actions proposed in the site assessment and intended uses of the abandoned site will eliminate unacceptable risks as described in subdivisions (f)(1) and (2) of this section; or

(B) Activities required to allow the intended reuse or redevelopment of the abandoned site are in a manner which will protect public health and the environment as described in subdivisions (f)(1) and (2) of this section.

(i) Nothing in this section shall relieve the prospective purchaser, after acquisition of legal title to the abandoned site, of any liability for contamination later caused by the purchaser.

(j) A prospective purchaser of an abandoned site under this subchapter shall not be responsible for paying any fines or penalties levied against any person responsible for contamination on the abandoned site prior to the implementing agreement with the division.

(k)(1) Once the prospective purchaser has acquired legal title to the abandoned site, the purchaser shall take all the steps necessary to

prevent aggravating or contributing to the contamination of the air, land, or water, including downward migration of contamination from any existing contamination on the abandoned site.

(2) The purchaser shall not use or redevelop the abandoned site in any way which is likely to interfere with subsequent remedial actions or in a manner that differs from the intended use established in the implementing agreement described in subsection (d) of this section.

(l) A restriction shall be placed on the deed for the property covered by this subchapter, which restricts the use of the property to activities and compatible uses that will protect the integrity of any remedial action measures implemented on the property.

(m) Upon written notice to the division, the implementing agreement, including all rights and cleanup liabilities entered into by the division and the prospective purchaser under subsection (d) of this section, is transferable in its entirety to all subsequent owners of the property who did not, by act or omission, cause or contribute to any release or threatened release of hazardous substances on the abandoned site.

(n) Subsequent owners shall receive a copy of the implementing agreement from the prospective purchaser and shall not use the abandoned site in a manner which is inconsistent with the intended use described in the implementing agreement authorized by subsection (d) of this section.

(o)(1) Within thirty (30) days of the date that the prospective purchaser acquires legal title to the abandoned site, the purchaser shall file a notice of the implementing agreement with the clerk of the circuit court in the county in which the abandoned site is located.

(2) Notice of any subsequent amendments to the implementing agreement shall also be filed with the clerk of the circuit court within thirty (30) days after their effective dates.

(3) The clerk of the circuit court shall docket and record the notice so that it appears in the purchaser's chain of title.

History. Acts 1997, No. 1042, § 1; 2001, No. 164, § 3; 2005, No. 1164, § 4; 2019, No. 910, §§ 2833-2838.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (c); and substituted "division" for "department" in (d)(4) and throughout the rest of the section.

SUBCHAPTER 12 — ABANDONED AGRICULTURAL PESTICIDE DISPOSAL ACT

SECTION.

8-7-1204. Abandoned Pesticide Advisory Board.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: "It is found and determined by

the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act estab-

lishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should be-

come effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-7-1204. Abandoned Pesticide Advisory Board.

- (a) There is created the Abandoned Pesticide Advisory Board.
- (b) The board shall be composed of up to six (6) members:
 - (1) One (1) member shall be a representative from the Arkansas Farm Bureau Federation;
 - (2) One (1) member shall be a representative from the Arkansas Natural Resources Commission;
 - (3) One (1) member shall be a representative from the University of Arkansas Cooperative Extension Service;
 - (4) One (1) member shall be a representative from the Division of Environmental Quality;
 - (5) One (1) member may be a representative from the United States Natural Resources Conservation Service; and
 - (6) One (1) member shall be a representative from the Department of Agriculture, who shall serve as the Chair of the Abandoned Pesticide Advisory Board.
- (c) Members of the board shall serve without compensation.

History. Acts 1999, No. 1174, § 1; 2001, No. 1130, § 3; 2019, No. 910, § 43.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (b)(4), and substituted "Department of Agriculture" for "State Plant Board" in (b)(6).

SUBCHAPTER 13 — PHASE I ENVIRONMENTAL SITE ASSESSMENT CONSULTANT ACT

SECTION.

8-7-1302. Purpose.

8-7-1311. Fees.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that

the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the

fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the

preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-7-1302. Purpose.

It is the purpose of this subchapter to authorize the Division of Environmental Quality to establish and administer a certification program to maintain a list of Phase I consultants who meet the minimum qualifications for an environmental professional who undertakes a Phase I environmental site assessment, referred to as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, as it exists on January 1, 2007, or a Phase I environmental site assessment under the American Society for Testing and Materials standard E1527-05 as in effect on January 1, 2007.

History. Acts 2005, No. 2141, § 1; 2007, No. 1018, § 1; 2019, No. 910, § 2839.

substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

Amendments. The 2019 amendment

8-7-1311. Fees.

(a)(1) Under rules promulgated by the Arkansas Pollution Control and Ecology Commission, the Division of Environmental Quality may assess fees to Phase I consultants who apply to be placed on the list maintained under § 8-7-1304.

(2) Fees shall be reasonable and appropriate and subject to periodic review.

(b) All fees collected under this subchapter shall be deposited into the Hazardous Waste Permit Fund, § 19-6-434.

(c) Fees collected under this subchapter shall be used for the purposes of administering this subchapter.

History. Acts 2005, No. 2141, § 1; 2007, No. 1018, § 1; 2019, No. 315, § 681; 2019, No. 910, § 2840.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1).

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (a)(1).

SUBCHAPTER 14 — CONTROLLED SUBSTANCES CONTAMINATED PROPERTY
CLEANUP ACT

SECTION.
8-7-1402. Professional cleanup of properties contaminated through the manufacture of controlled substances.

SECTION.
8-7-1403. Reporting of properties contaminated through the manufacture of controlled substances.

SECTION.

8-7-1404. Recordkeeping required.

8-7-1405. Notice — Cleanup — Residual contamination.

SECTION.

8-7-1406. Remediated property.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-7-1402. Professional cleanup of properties contaminated through the manufacture of controlled substances.

(a) The Division of Environmental Quality shall:

(1) Establish and administer a certification program to:

(A) Certify contractors who choose to undertake the inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances; and

(B) Require as a condition of certification that the contractors demonstrate that they have the qualifications required to undertake inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances;

(2) Establish standards for the remediation of properties contaminated through the manufacture of controlled substances;

(3) Make the certification program rules and the remediation standards available to law enforcement officials and the public:

(A) On the division’s website; and

(B) In hard copy upon request to the division; and

(4) Annually review and update the remediation standards.

(b)(1) The Arkansas Pollution Control and Ecology Commission shall promulgate rules to implement the certification program for contractors in the inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances.

(2) The rules promulgated by the commission under this section shall include without limitation:

(A) Application forms for certification;

(B) Continuing education requirements;

- (C) Professional and technical standards for certification;
- (D) Renewals of certification;
- (E) Procedures for revocation and other actions that affect the status of certification; and
- (F) Reasonable fees.

History. Acts 2007, No. 864, § 1; 2019, No. 693, § 31; 2019, No. 910, §§ 2841, 2842.

Amendments. The 2019 amendment by No. 693 inserted “the” preceding “qualifications” in (a)(1)(B); deleted former (a)(2); redesignated former (a)(3) through (a)(5) as (a)(2) through (a)(4); and deleted “By March 1, 2008” from the beginning of (a)(2).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a); substituted “division’s” for “department’s” in (a)(4)(A); and substituted “division” for “department” in (a)(4)(B).

8-7-1403. Reporting of properties contaminated through the manufacture of controlled substances.

(a) If a private property owner finds an abandoned laboratory for the manufacture of controlled substances on his or her property and there has been no active on-site law enforcement involvement, the private property owner shall notify local law enforcement for proper removal of contaminated material.

(b)(1) If a property owner finds or becomes aware of evidence of a laboratory for the manufacture of controlled substances on his or her property, the property owner shall have the property inspected in accordance with the guidelines established by the Division of Environmental Quality under this subchapter by a contractor certified by the division under § 8-7-1402.

(2) If the contractor selected by the property owner under subdivision (b)(1) of this section verifies that a laboratory for the manufacture of controlled substances has been on the property, the contractor shall notify the division, and the division shall place the property on the contaminated properties list required under § 8-7-1404.

History. Acts 2007, No. 864, § 1; 2019, No. 910, § 2843.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in (b)(1); and substituted “division” for “department” in (b)(1) and twice in (b)(2).

8-7-1404. Recordkeeping required.

(a) The Division of Environmental Quality shall maintain records concerning properties contaminated through the manufacture of controlled substances.

(b) The division shall:

(1) Create a list of properties contaminated through the manufacture of controlled substances;

(2) Place a contaminated property on the contaminated properties list;

(3) Not determine that a property has been adequately remediated unless:

(A) The inspection, sampling, remediation, and removal of contaminated materials is performed:

(i) By or under the direction and responsible charge of an individual who has obtained a certification under the rules established by the Arkansas Pollution Control and Ecology Commission under this subchapter; or

(ii) By an employee of a public agency that has the responsibility of regulatory enforcement, emergency response, the protection of public health and welfare, or the protection of the environment while the employee is acting in the course of that employment; and

(B) The property has met the remediation standards developed by the division;

(4)(A) Post the results of a cleanup on the division's website for ten (10) working days after the division determines that the property has been adequately remediated.

(B) After the ten (10) working days of posting required under subdivision (b)(4)(A) of this section, the division shall remove from the division's website the formerly contaminated property and the results of the cleanup; and

(5) Remove a property from the list when the division finds that the property has been adequately remediated.

(c)(1) The division shall make the list of properties contaminated through the manufacture of controlled substances available to law enforcement officials and to the public:

(A) On the division's website; and

(B) In hard copy upon request to the division.

(2) The division shall keep hard copies of the information required under this section until the division has removed the property from the list of properties contaminated through the manufacture of controlled substances.

History. Acts 2007, No. 864, § 1; 2009, No. 1199, § 10; 2019, No. 910, §§ 2844-2848.

Amendments. The 2019 amendment substituted "The Division of Environmen-

tal Quality" for "By May 1, 2008, the Arkansas Department of Environmental Quality" in (a); and substituted "division" for "department" throughout (b) and (c).

8-7-1405. Notice — Cleanup — Residual contamination.

(a) If a law enforcement officer discovers a laboratory for the manufacture of controlled substances or arrests a person for having equipment used in manufacturing controlled substances on any real property, the law enforcement officer shall at the time of the discovery or arrest deliver a copy of the notice of removal required under subsection (d) of this section to:

(1) The owner of the real property if the owner is present at the time of the discovery or arrest;

(2) The on-site manager if the on-site manager is present at the time of the discovery or arrest;

(3) An on-site drop box if available; or

(4) In the case of a tenant-owner unit in a space-rental mobile home or a recreational vehicle park to:

(A) The occupant if the occupant is on site at the time of delivery; or

(B) The on-site park landlord if the on-site park landlord is present at the time of delivery.

(b)(1) If neither the owner nor the on-site manager of a property used in manufacturing controlled substances is on the property at the time of the discovery of or arrest regarding a laboratory for the manufacture of controlled substances, the law enforcement officer shall make every reasonable effort to obtain the necessary contact information concerning the owner from the tenant, property manager, or neighbors.

(2) Within five (5) business days after the discovery of or arrest regarding a laboratory for the manufacture of controlled substances, the law enforcement officer shall send the notice of removal required under subsection (d) of this section by certified mail and regular mail to the owner of the property and the owner's on-site manager or, in the case of a space-rental mobile home or a recreational vehicle park, to the park landlord.

(3) The Division of Environmental Quality shall cooperate with the Arkansas Crime Information Center to create a computer link that will allow the center to transfer to the division information from the National Clandestine Laboratory Seizure Report required under 28 C.F.R. Part 23 that is relevant to the notice of removal required under subsection (d) of this section.

(c)(1) At the time a law enforcement officer removes the gross contamination from property used as a laboratory for the manufacture of controlled substances, the law enforcement officer shall order the removal of all persons from the residually contaminated portion of the property or dwelling unit or, in the case of a space-rental mobile home or a recreational vehicle park, from the unit located on the property.

(2) After the law enforcement officer removes all persons under subdivision (c)(1) of this section, the law enforcement officer shall affix the notice of removal required under subsection (d) of this section in a conspicuous place on the property or, in the case of a space-rental mobile home or a recreational vehicle park, on the unit located on the property.

(d) The notice of removal under this section shall be in writing and shall contain all of the following:

(1) The word "WARNING" in large bold type at the top and the bottom of the notice;

(2) The date of the seizure and removal;

(3) The address or location of the property, including the identification of any dwelling unit, room number, apartment number, or vehicle number;

(4) The name of the law enforcement agency that seized the laboratory for the manufacture of controlled substances and the law enforcement agency's contact telephone number;

(5) A list of telephone numbers and contact information for all local and state agencies involved in the process of remediation;

(6) The contact numbers for local and state agencies associated with the cleanup of laboratories for the manufacture of controlled substances; and

(7) A statement that:

(A) A laboratory for the manufacture of controlled substances was discovered on the property;

(B) Chemicals or equipment, or both, that were used in the manufacture of controlled substances were seized at the property;

(C) Hazardous substances, toxic chemicals, or other waste products may still be present on the property or, in the case of a space-rental mobile home or a recreational vehicle park, in the unit located on the property;

(D)(i) It is unlawful for any unauthorized person to enter a residually contaminated property or, in the case of a space-rental mobile home or recreational vehicle park, the unit located on the property until the division establishes that the portion of the property identified as residually contaminated has been properly remediated.

(ii) The following persons are authorized to enter a residually contaminated property or, in the case of a space-rental mobile home or recreational vehicle park, the unit located on the property:

(a) An employee of the division;

(b) A law enforcement officer;

(c) The owner of a residually contaminated property; and

(d) A representative of an owner of a residually contaminated property if the representative has signed a waiver of liability;

(E) Failure to comply with this section is a violation of the division's rules pertaining to the cleanup of laboratories for the manufacture of controlled substances;

(F) Disturbing the notice of removal posted on the property is a violation of the division's rules concerning the cleanup of laboratories for the manufacture of controlled substances; and

(G) The owner of the property is responsible for remediating the residually contaminated portion of the property in compliance with the division's rules concerning the cleanup of laboratories for the manufacture of controlled substances.

History. Acts 2007, No. 864, § 1; 2009, No. 1199, § 11; 2019, No. 910, §§ 2849-2852.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (b)(3); and substituted "division" for "department" throughout the section.

8-7-1406. Remediated property.

(a) After property contaminated through the manufacture of controlled substances is remediated and the property owner receives official notification from the Division of Environmental Quality, no person, including the property owner, landlord, and real estate agent, is required to report or otherwise disclose the past contamination.

(b) Unless retention is mandated by federal law, the division shall destroy all copies of information required to be kept under this subchapter that refer to a specific property location once the property is officially removed from the contaminated properties list.

History. Acts 2007, No. 864, § 1; 2019, No. 910, § 2853.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a); and substituted “division” for “department” in (b).

CHAPTER 9
RECYCLING

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. RECYCLING GENERALLY.
- 3. RECYCLABLE ITEMS.
- 4. USED TIRE RECYCLING AND ACCOUNTABILITY ACT.
- 5. ARKANSAS NEWSPAPER RECYCLING ADVISORY COMMITTEE. [REPEALED.]
- 6. MERCURY SWITCH REMOVAL ACT OF 2005.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 8-9-101. Policy.
- 8-9-104. Definitions.

SECTION.

- 8-9-105. Penalties and procedures.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-9-101. Policy.

It is the policy of the State of Arkansas to encourage and promote recycling in order to conserve natural resources, conserve energy, and preserve landfill space. In furtherance of this policy, the State of Arkansas adopts as a goal in the new century the recycling of forty percent (40%) of its municipal solid waste and forty-five percent (45%) of its municipal solid waste, as shall be determined by the Arkansas Department of Environmental Quality or the Division of Environmental Quality by rule.

History. Acts 1991, No. 749, § 1; 2001, No. 94, § 1; 2019, No. 315, § 682; 2019, No. 910, § 2854.

Amendments. The 2019 amendment by No. 315, in the second sentence, deleted “by 2005” following the first occurrence of

“solid waste”, deleted “by 2010” following the second occurrence of “solid waste”, and substituted “rule” for “regulation”.

The 2019 amendment by No. 910 inserted “or the Division of Environmental Quality”.

8-9-104. Definitions.

As used in this chapter:

(1) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(2) “Materials in the recycling process” means ferrous and nonferrous metals diverted or removed from the solid waste stream so that they may be reused, as long as:

(A) Those materials are processed or handled using reasonably available processing equipment and control technology, as determined by the Director of the Division of Environmental Quality, taking cost into account; and

(B) A substantial amount of the materials are consistently utilized to manufacture a product which otherwise would have been produced using virgin material;

(3) “Municipal solid waste” means waste produced by individuals, public entities, agriculture, and businesses, including yard waste and waste not traditionally included in the recycling rate calculation and that is by its nature eligible for disposal in a municipal solid waste landfill;

(4) “Person” means an individual, municipality, other governmental entity, or another entity recognized by law with rights and duties;

(5) “Recyclable materials” or “recyclables” means those materials from the solid waste stream that can be recovered for reuse in present or reprocessed form;

(6) “Recycling” means the systematic collection, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;

(7) “Solid waste” means the same as provided by § 8-6-702;

(8) “Solid waste board” or “board” means a regional solid waste management board or its successor created under § 8-6-701 et seq.;

(9) “Solid waste district” or “district” means a regional solid waste management district or its successor created under § 8-6-701 et seq.;

(10) “Source separation” means the act or process of removing a particular type of recyclable material from the solid waste stream at the point of generation or at a point under control of the generator for the purpose of collection and recycling; and

(11) “Yard waste” means grass clippings, leaves, and shrubbery trimmings.

History. Acts 1991, No. 749, § 1; 1993, No. 479, § 2; 1999, No. 1164, § 110; 2001, No. 94, § 2; 2017, No. 1067, § 3; 2019, No. 693, § 32; 2019, No. 695, § 2; 2019, No. 910, §§ 2855, 2856.

Amendments. The 2019 amendment by No. 693 deleted the definition for “Recyclable materials collection center” or “collection center”.

The 2019 amendment by No. 695 added the definition for “Person”.

The 2019 amendment by No. 910 deleted the definition for “Department”; and substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (3)(A) [now (2)(A)].

8-9-105. Penalties and procedures.

(a) Any person who violates any provision of § 8-9-301 et seq. or the Used Tire Recycling and Accountability Act, § 8-9-401 et seq., or of any rule or order issued pursuant to this chapter, shall be subject to the same penalty and enforcement provisions as are contained in § 8-6-204.

(b) Except as otherwise provided in this chapter, the procedure of the Arkansas Pollution Control and Ecology Commission for issuance of rules, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229 of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., including without limitation §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

(c) All rules adopted under this chapter shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

History. Acts 1991, No. 749, § 1; 1997, No. 179, § 6; 2019, No. 315, § 683.

Amendments. The 2019 amendment

deleted “and regulation” following “rule” in (a); and deleted “and regulations” following “rules” in (b) and (c).

SUBCHAPTER 2 — RECYCLING GENERALLY

SECTION.

8-9-202. Powers and duties of the division.

SECTION.

8-9-203. Recycling by governmental entities.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause

provided: “It is found and determined by the General Assembly of the State of Ar-

kansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Effi-

ciencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-9-202. Powers and duties of the division.

The Division of Environmental Quality shall have the power and duty to:

(1) Adopt reasonable rules to effectuate the purposes of this subchapter;

(2) Promote public education and public awareness of the necessity of supporting waste reduction and recyclable material recovery as an integral part of all solid waste and recyclable materials programs in the state;

(3) Provide, to the extent practicable, upon request, to state agencies, planning and technical assistance in carrying out their responsibilities under this subchapter; and

(4) Implement, administer, and fund the collection and recycling or collection and disposal of extra-large tires as defined in § 8-9-402 with the advice and assistance of the Compliance Advisory Panel.

History. Acts 1991, No. 749, § 1; 2019, No. 177, § 2; 2019, No. 315, § 684; 2019, No. 910, § 2857.

Amendments. The 2019 amendment by No. 177 added (4).

The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (1).

The 2019 amendment by No. 910 substituted "division" for "department" in the section heading; and substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language.

8-9-203. Recycling by governmental entities.

(a) Each state agency, state college or university, county, city, and public school, in cooperation with the Division of Environmental Quality and the Compliance Advisory Panel shall:

(1) Establish a source separation and recycling program for recyclables generated as a result of agency operations;

(2) Adopt procedures for collection and storage of recyclables; and

(3) Make contractual or other arrangements for transportation and sale of recyclables.

(b) Nothing in this section shall prohibit any state agency, state college or university, county, city, or public school from engaging in, contracting for, or otherwise allowing or arranging for composting of yard waste on property owned or controlled by the governmental entity.

History. Acts 1991, No. 749, § 1; 2017, No. 1067, § 5; 2019, No. 910, § 2858.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a).

SUBCHAPTER 3 — RECYCLABLE ITEMS

SECTION.

8-9-302. Plastic container labeling.

8-9-303. Lead-acid batteries.

SECTION.

8-9-304. Used motor oil.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-9-302. Plastic container labeling.

(a)(1) Beginning July 1, 1992, a person shall not distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the product is labeled with a code indicating the plastic resin used to produce the plastic bottle or rigid plastic container. Rigid plastic bottles or rigid plastic containers with labels and basecups of a different material shall be coded by their basic material.

(2) The code shall consist of a number placed within a triangle of arrows and letters placed below the triangle of arrows. The triangle shall be equilateral, formed by three (3) arrows, with the apex of each point of the triangle at the midpoint of each arrow rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three (3) arrows curved at their midpoints, shall depict a clockwise path around the code number.

(3) The numbers and letters used shall be as follows:

- (A) PETE (polyethylene terephthalate);
- (B) HDPE (high density polyethylene);
- (C) V (vinyl);
- (D) LDPE (low density polyethylene);
- (E) PP (polypropylene);
- (F) PS (polystyrene); and
- (G) OTHER.

(b) The Division of Environmental Quality shall maintain a list of the label codes provided pursuant to this section and shall provide a copy of that list to any person upon request.

History. Acts 1991, No. 749, § 1; 2019, No. 910, § 2859. substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (b).

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (b).

8-9-303. Lead-acid batteries.

(a) A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in the state shall:

(1) Accept, at the point of transfer, in a quantity at least equal to the number of new lead-acid batteries purchased, used lead-acid batteries from customers, if offered by customers; and

(2) Post written notices which must be at least eight and one-half inches by eleven inches (8½" x 11") in size and must contain the universal recycling symbol and the following language:

(A) “It is illegal to discard a motor vehicle or marine battery.”;

(B) “Recycle your used batteries.”;

(C) “State law requires us to accept used lead-acid batteries for recycling, in exchange for new lead-acid batteries purchased.”; and

(D) “When you purchase any new lead-acid battery, you will be charged an additional ten dollars (\$10.00) unless you return a used lead-acid battery for refund within thirty (30) days.”

(b)(1) Each person who purchases a lead-acid battery at retail shall be assessed a surcharge of ten dollars (\$10.00) per lead-acid battery by the retailer unless for each lead-acid battery purchased:

(A) That person returns a used lead-acid battery to the retailer within thirty (30) days of the date of his or her surcharged purchase;

(B) That person provides a valid police report which indicates that a lead-acid battery has been stolen from that person; or

(C) The purchase is for installation in an item which was sold without a lead-acid battery and there is no used lead-acid battery for that item which could be returned, and that person signs a written statement containing the following language:

“I attest that this purchase of a lead-acid battery is for installation in an item which was sold without a lead-acid battery, and there is no used battery for this item which can be returned.”

(2) A retailer shall refund the ten-dollar surcharge to any purchaser of a new lead-acid battery who presents a used lead-acid battery to the retailer with a receipt for the purchase of a new lead-acid battery from that retailer within that thirty-day period.

(3) A retailer may keep any lead-acid battery surcharge moneys which are not properly claimed within thirty (30) days after the date of sale.

(c) The Division of Environmental Quality shall produce, print, and distribute the notices required by this section to all places where lead-acid batteries are offered for sale at retail.

(d) In performing its duties under this section, the division may inspect any place, building, or premises governed by this section.

(e)(1) Any person selling new lead-acid batteries at wholesale shall accept, at the point of transfer, in a quantity at least equal to the number of new lead-acid batteries purchased, used lead-acid batteries from customers if offered by customers.

(2) A person accepting lead-acid batteries in transfer from a lead-acid battery retailer shall be allowed a period not to exceed ninety (90) days to remove lead-acid batteries from the retail point of collection.

(f) No person shall place a used lead-acid battery in municipal solid waste or discard or otherwise dispose of a lead-acid battery, except by delivery to:

(1) A lead-acid battery retailer or wholesaler;

(2) A collection or recycling facility authorized under the law of the State of Arkansas; or

(3) A secondary lead smelter permitted by the United States Environmental Protection Agency.

(g) No lead-acid battery retailer shall dispose of a used lead-acid battery except by delivery to the agent of a lead-acid battery wholesaler, to a battery manufacturer for delivery to a secondary lead smelter permitted by the United States Environmental Protection Agency, or to a collection or recycling facility authorized under the law of the State of Arkansas or to a secondary lead smelter permitted by the United States Environmental Protection Agency.

(h) An owner or operator of a solid waste landfill shall not knowingly accept for disposal a lead-acid battery.

(i) Each lead-acid battery improperly disposed of or accepted for disposal shall constitute a separate violation.

(j) The requirements for retailers contained in subsections (a) and (b) of this section shall not apply to a person whose retail sales of lead-acid batteries are not in the ordinary course of business.

(k) Nothing in this section shall be construed to prohibit the collection, transportation, or disposal of lead-acid batteries mixed or commingled with solid waste by any person engaged in the collection, transportation, or disposal of solid waste, unless it can be demonstrated that the person knew or should have known that such lead-acid batteries had been mixed or commingled with the solid waste collected, transported, or disposed of, and unless it can be demonstrated that it is economically and environmentally feasible to remove and recover the lead-acid batteries from the solid waste collected, transported, or disposed of.

History. Acts 1991, No. 749, § 1; 1993, No. 579, § 2; 2019, No. 910, § 2860.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in (c); and substituted "division" for "department" in (d).

8-9-304. Used motor oil.

The Arkansas Pollution Control and Ecology Commission shall adopt, after notice and public hearing, reasonable rules that are protective of the public health and environment for the collection, storage, and disposal, reuse, or recycling of used motor oil.

History. Acts 1991, No. 749, § 1; 2019, No. 315, § 685; 2019, No. 693, § 33.

Amendments. The 2019 amendment by No. 315 deleted “No later than December 31, 1992” from the beginning and substituted “rules” for “regulations”.

The 2019 amendment by No. 693 deleted “No later than December 31, 1992” from the beginning and substituted “that are protective” for “which are protective”.

SUBCHAPTER 4 — USED TIRE RECYCLING AND ACCOUNTABILITY ACT

SECTION.

- 8-9-401. Title — Legislative intent — Findings.
- 8-9-402. Definitions.
- 8-9-403. Operation of waste tire sites — Requirements and prohibited activities.
- 8-9-404. Rim removal fees — Import fees — Commercial generator fees — Definitions.
- 8-9-405. Used tire program reimbursements.
- 8-9-407. Electronic uniform used tire manifest system.
- 8-9-408. Accountability requirements for

SECTION.

- used tire programs — Business plans.
- 8-9-409. Performance and efficiency evaluations.
- 8-9-410. Consolidation of used tire programs.
- 8-9-411. Tire transporters — Licenses.
- 8-9-414. Powers and duties of the Arkansas Pollution Control and Ecology Commission.
- 8-9-415. Permitting, licensing, inspections, procedures, enforcement, and penalties.

Cross References. Applicability of the Environmental Compliance Resource Act to this subchapter, § 8-6-2004.

Proceedings in circuit court, § 8-6-206.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two

uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-9-401. Title — Legislative intent — Findings.

(a) This subchapter shall be known and may be cited as the “Used Tire Recycling and Accountability Act”.

(b) The purpose of this subchapter is to:

(1) Protect the public health and the state's environmental quality by setting and implementing standards to be followed in the hauling, collection, storage, and recycling or disposal of recyclable tires, waste tires, and used tires culled for resale;

(2) Provide accountability and sustainability for used tire programs by requiring use of the electronic uniform used tire manifest system developed by the Division of Environmental Quality and business plans for used tire programs;

(3) Equalize the application of fees for all tires removed from rims; and

(4) Ensure that reimbursements for used tire programs are related to the overall used tire program goals.

(c) The General Assembly finds that:

(1) If not properly managed, used tires pose a potential threat to human health and safety and the environment because used tires:

(A) Are a known breeding habitat for mosquitoes and other disease-transmitting vectors; and

(B) Pose substantial fire hazards;

(2) The state must have a used tire program for recyclable tires, waste tires, and used tires culled for resale that is accountable, effective, and efficient; and

(3) The primary goal of the used tire program is to recycle or put to beneficial use as many used tires as possible.

History. Acts 1991, No. 749, § 1; 2017, No. 317, § 1; 2019, No. 910, § 2861.

substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b)(2).

Amendments. The 2019 amendment

8-9-402. Definitions.

As used in this subchapter:

(1) "Beneficial use" means using a tire or part of a tire:

(A) To make another product;

(B) To make a component material of another product;

(C) As a substitute for a commercial product or material; or

(D) As a component to produce an alternative fuel for commercial purposes;

(2)(A) "Commercial generator" means a person who sells new tires or provides delivery of new tires as part of fleet services to any one (1) or more of the following:

(i) A municipality;

(ii) A county;

(iii) A state agency;

(iv) A federal agency;

(v) A school district;

(vi) A political subdivision of the state; or

(vii) A person who in the ordinary course of business buys tires in bulk for use on commercial vehicles.

(B) "Commercial generator" does not include a tire retailer;

(3) "Electronic uniform used tire manifest system" means an administrative method developed by the Division of Environmental Quality under § 8-9-407 that:

(A) Primarily uses an electronic application for the submission and management of information related to the generation, collection, transportation, distribution, and recycling, disposal, or resale of each recyclable tire, waste tire, and used tire culled for resale regulated under this subchapter;

(B) Secondly may allow submission of used tire data that is manifested using an equivalent paper documentation; and

(C) Records the origin, date of collection, date of transfer, quantity, type, transporter, and destination for each recyclable tire, waste tire, and used tire culled for resale regulated under this subchapter;

(4)(A) "Extra-large tire" means a tire that, due to its size or construction, is more difficult to process for recycling or disposal than a large tire and costs substantially more to process than a large tire.

(B) "Extra-large tire" includes without limitation a tire used, capable of being used, or designed to be used on any of the following vehicles or equipment:

- (i) A skid steer loader;
- (ii) Excavation equipment;
- (iii) A farm implement, including without limitation a tractor;
- (iv) A backhoe;
- (v) A road grader;
- (vi) Industrial equipment;
- (vii) A skidder; or
- (viii) A heavy duty truck used off-road for mining.

(C) "Extra-large tire" includes without limitation a wide-base tire or extra-wide single tire;

(5) "Inter-district used tire program" means a program formed by agreement of two (2) or more regional solid waste management boards to pool resources of all regional solid waste management boards that are parties to the agreement for the administration of one (1) consolidated used tire program;

(6) "Large tire" means a tire with a load rating of "F" or higher;

(7) "Load rating" means the system of trade designations that identifies the weight-carrying capacity range of a tire;

(8)(A) "Operator" means a person who performs a function that:

- (i) Requires individual judgment; and
- (ii) May directly affect the proper operation at one (1) or more of the following:
 - (a) A tire collection center;
 - (b) A tire processing facility;
 - (c) A tire generator facility; or
 - (d) A waste tire monofill.

(B) "Operator" includes a person who performs a function at a waste tire site.

(C) "Operator" does not include a person who exclusively exercises general administrative supervision;

(9) "Owner" means a person who holds legal title to property where a tire collection center, tire processing facility, tire generator facility, waste tire monofill, waste tire site, or other waste tire facility exists;

(10) "Person" means an individual, government entity, or any other entity that is recognized by law with rights and duties;

(11) "Qualified entity" means an entity that demonstrates to the division that the entity has the capability, experience, and resources to operate and administer a used tire program in compliance with this subchapter;

(12) "Recyclable tire" means a worn, damaged, or defective tire that is recycled because it is no longer repairable, reusable, or suitable for its original intended purpose;

(13) "Recycle" means the systematic process of collecting, sorting, decontaminating, and returning waste materials to commerce as commodities for use, other beneficial use, or exchange;

(14)(A) "Small tire" means a tire that has a load rating lower than "F".

(B) "Small tire" includes a tire from any of the following vehicles:

- (i) An automobile;
- (ii) A motorcycle; or
- (iii) An all-terrain vehicle;

(15)(A) "Tire" means any one (1) or more of the following:

(i) A continuous, ring-shaped, removable cover made of solid rubber, pneumatic rubber, or semipneumatic rubber that is installed around a wheel rim; or

(ii) Any other round piece of equipment that is attached or could be attached to a vehicle or aircraft and has a primary function of enabling surface mobility.

(B) "Tire" does not include a solid wheel rim with an integral rubber covering or a tire used on a nonmotorized bicycle, golf cart, or lawn mower;

(16) "Tire collection center" means a site where tires are collected from tire generators, tire transporters, or the public before being recycled or disposed of by a used tire program;

(17)(A) "Tire generator" means a person who:

- (i) Removes tires from rims for disposal or resale; or
- (ii) Stores used tires on or in property owned, leased, or otherwise controlled by that person.

(B) "Tire generator" includes without limitation:

- (i) A tire retailer;
- (ii) A tire wholesaler;
- (iii) A tire transporter;
- (iv) A tire manufacturer;
- (v) A manufacturer of retreaded tires;
- (vi) A new car dealer;
- (vii) A used car dealer;
- (viii) An auto repair shop; or
- (ix) A salvage yard.

- (C) "Tire generator" does not include a commercial generator;
- (18) "Tire manufacturer" means a manufacturing operation engaged in the final assembly of the basic components of a tire;
- (19) "Tire processing facility" means a site where equipment is used to cut, chip, grind, or otherwise alter used tires;
- (20)(A) "Tire retailer" means any one (1) or more of the following:
- (i) A person who is in the business of selling new tires, used tires, or both new tires and used tires to the end consumer; or
 - (ii) A person who is in the business of or receives compensation for removing tires from rims.
- (B) "Tire retailer" does not include a person who sells tires to another person exclusively for the purpose of resale if the subsequent retail sale is subject to the fee imposed under § 8-9-404 or a commercial generator;
- (21) "Tire transporter" means a person who is in the business of or receives compensation for transferring used tires from one (1) location to another location for collection, storage, processing, recycling, disposal, reuse, or resale;
- (22)(A) "Used tire" means a tire that meets one (1) or more of the following criteria:
- (i) Is repairable or retreadable for its original intended purpose;
 - (ii) Is reusable;
 - (iii) Is recyclable; or
 - (iv) Has been collected by a tire retailer or at a tire collection center operated under this subchapter.
- (B) "Used tire" includes without limitation a recyclable tire, waste tire, and used tire culled for resale.
- (C) "Used tire" does not include a tire being held for ninety (90) days or less for the purpose of retreading or repairing the tire;
- (23) "Used tire culled for resale" means a tire that is removed from the rim but is diverted from a tire collection center, tire processing facility, or tire transporter with the intention of selling for reuse;
- (24) "Used tire program" means a program that receives funding under this subchapter and is operated by:
- (A) A regional solid waste management board; or
 - (B) An inter-district used tire program;
- (25) "Vehicle" means any piece of equipment that uses wheels for surface mobility;
- (26) "Waste tire" means a worn, damaged, or defective tire that is land disposed because it is no longer repairable, reusable, or suitable for its original intended purpose;
- (27)(A) "Waste tire site" means a location where unpermitted used tires are accumulated, whether loosely stored, compacted and baled, or a combination of both loosely stored and compacted and baled.
- (B) "Waste tire site" does not include:
- (i) A location where only new tires are stored; or
 - (ii) A location that is authorized to store tires by the division or rules promulgated by the Arkansas Pollution Control and Ecology Commission;

(28) “Waste tires originating from a tire manufacturer” means those new tires that originate from a tire assembly process and are determined by the tire manufacturer to be either defective or unfit for use on a vehicle; and

(29) “Wide-base tire” or “extra-wide single tire” means a tire approximately four hundred fifty-five millimeters (455 mm) wide that is used on a vehicle in which the front axle load exceeds the load capacity of a truck tire.

History. Acts 1991, No. 749, § 1; 1993, No. 518, § 1; 1995, No. 1315, § 1; 1997, No. 1292, § 1; 1999, No. 1164, § 112; 2003, No. 1304, § 1; 2011, No. 744, § 1; 2015, No. 840, § 1; 2017, No. 317, § 1; 2019, No. 315, § 686; 2019, No. 910, §§ 2862-2864; 2019, No. 980, §§ 2-7.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (25)(B)(ii) [now (27)(B)(ii)].

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (3); and substituted

“division” for “department” in (9) [now (11)] and (25)(B)(ii) [now (27)(B)(ii)].

The 2019 amendment by No. 980 inserted “under § 8-9-407” in the introductory language of (3); substituted “Primarily uses” for “Uses” in (3)(A); inserted (3)(B) and redesignated former (3)(B) as (3)(C); added (4)(C); rewrote (6); substituted “lower than ‘F’” for “of ‘F’ or lower and a rim size of nineteen inches (19”) or smaller” in (12)(A) [now (14)(A)]; added the definitions for “Operator” and “Owner”; and made stylistic changes.

8-9-403. Operation of waste tire sites — Requirements and prohibited activities.

(a)(1) The owner or operator of any waste tire site shall provide the Division of Environmental Quality and the applicable regional solid waste management district with:

(A) Information concerning the waste tire site’s location and size and the approximate number of tires that are accumulated at the waste tire site; and

(B) A written plan specifying a method and time schedule, subject to approval by the division, for the removal, disposal, or recycling of the tires.

(2) The owner or operator shall implement a written plan approved by the division according to the written plan’s schedule.

(b) A person shall not cause or permit the open burning of tires in the state.

(c)(1) A person shall not maintain a waste tire site.

(2) It is illegal for any person to dispose of tires or portions of tires in the state unless the tires or portions of tires are disposed of for processing or collected for processing at a permitted tire processing facility, a tire collection center, or a permitted solid waste disposal facility.

(3)(A) Unless otherwise provided by law or rule, whole tires shall not be deposited into a landfill or a waste tire monofill as a method of final disposal unless shredded or split into sufficiently small parts to assure their proper disposal.

(B) Unless otherwise provided by law or rule, only small tires that have been processed by cutting, shredding, or splitting into suffi-

ciently small parts to assure proper disposal or small tires processed by baling may be disposed of at a disposal site that has a permit issued for a landfill designed and operated as a waste tire monofill.

(C) Suitable processed-tire materials may be used in the construction of daily and intermediate cover systems for all landfills if the use is:

(i) Authorized by the division;

(ii) Shown to not present a threat to human health and the environment; and

(iii) Shown to control disease, vectors, fires, odors, blowing litter, or scavenging.

(4) A person who leases, owns, or otherwise controls real property may use tires in compliance with procedures approved by and rules promulgated by the Arkansas Pollution Control and Ecology Commission and procedures approved by each district:

(A) For soil erosion abatement and drainage purposes; or

(B) To secure covers over silage, hay, straw, or agricultural products.

(d) A tire processing facility permit or tire collection center permit, or both, is required for:

(1) A tire retreading business where tires are kept on any real property owned, leased, or otherwise controlled by the tire retreading business;

(2) A person that in the ordinary course of business removes tires from rims and the tires removed from rims are stored on any real property owned, leased, or otherwise controlled by the person; or

(3) A tire retailer that is serving as a tire collection center if recyclable tires, waste tires, or used tires culled for resale are kept on any real property owned, leased, or otherwise controlled by the tire retailer.

(e)(1) If disposed in the state, waste tires originating from a tire manufacturer shall be disposed of at a permitted tire collection center or a permitted tire processing facility for a fee to be established by the permitted tire collection center or permitted tire processing facility.

(2) Records of the disposition of the waste tires originating from a tire manufacturer shall be maintained by that tire manufacturer for a period of at least three (3) years and shall be available for review by the division.

History. Acts 1991, No. 749, § 1; 1993, No. 519, § 1; 1995, No. 1315, § 2; 1997, No. 1292, § 2; 2005, No. 961, § 1; 2005, No. 1951, § 1; 2011, No. 744, § 2; 2015, No. 840, § 2; 2017, No. 317, § 1; 2019, No. 315, §§ 687, 688; 2019, No. 910, §§ 2865-2869.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regula-

tion” in (c)(3)(A) and (c)(3)(B); and substituted “rules” for “regulations” in (c)(4).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in the introductory language of (a)(1); and substituted “division” for “department” throughout the section.

8-9-404. Rim removal fees — Import fees — Commercial generator fees — Definitions.

(a)(1) There is imposed a rim removal fee upon the transaction of removing a tire from a rim that is related to the sale of a replacement tire by a tire retailer.

(2) The rim removal fee shall be charged by the tire retailer to a person who:

(A) Purchases a replacement tire for a rim that necessitates the removal of a different tire from the same rim; or

(B) Purchases the service of removal of a tire from a rim and replacement with a tire that was not purchased from the tire retailer if the person requesting the rim removal cannot show proof of payment of the rim removal fee under this section for the replacement tire.

(3)(A) The rim removal fee shall be imposed at the rate of three dollars (\$3.00) for each new tire that replaces a tire removed from a rim and one dollar (\$1.00) for each used tire that replaces the tire removed from the rim.

(B) Except for the rim removal fees imposed under this section, a tire retailer shall not charge any other fee to a person who purchases the service of removal of a tire from a rim.

(C) For any tires collected by a tire retailer, the tire retailer shall ensure that the tires are transported by a licensed tire transporter to a permitted tire collection center, a solid waste management facility, a tire processing facility, or another tire retailer.

(D) The tire retailer shall account for each tire removed from a rim in the manner prescribed by the Department of Finance and Administration.

(E) Each tire retailer shall register with the department and comply with all requirements related to collecting and reporting rim removal fees.

(4) The rim removal fees imposed under this section shall be added to the total cost charged by the tire retailer to the purchaser after all applicable gross receipts or compensating use taxes on the tires have been computed and shall be separately stated on the invoice or bill of sale.

(5)(A) The rim removal fees imposed under this section shall be paid monthly to the Secretary of the Department of Finance and Administration.

(B) However, the tire retailer may retain five percent (5%) of the rim removal fee imposed under subdivision (a)(3)(A) of this section for administrative costs.

(6)(A) The rim removal fees remitted under subdivision (a)(5)(A) of this section shall be collected by the secretary and shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(B)(i) Each tire retailer shall file a return with the secretary on or before the twentieth of each month.

(ii) The return shall show the total rim removal fees collected for each tire removed from the rim during the preceding calendar month.

(iii) The tire retailer shall remit the rim removal fees with the return.

(iv) The secretary shall prescribe the form and contents of the return.

(b)(1) The department shall deposit the proceeds from rim removal fees collected under subsection (a) of this section into the State Treasury as special revenues to the credit of the following funds in the following percentages:

(A) Ninety-three percent (93%) to be deposited into the Used Tire Recycling Fund; and

(B) Seven percent (7%) to be deposited into the Division of Environmental Quality Fee Trust Fund.

(2) As used in this section, "proceeds from rim removal fees" means all moneys collected and received by the department under this section for rim removal fees imposed under subsection (a) of this section and interest and penalties on delinquent rim removal fees.

(c)(1)(A) There is imposed an import fee of one dollar (\$1.00) on each used tire that is imported into Arkansas.

(B) A person who imports a used tire shall be registered with the department and comply with all requirements related to collecting and reporting import fees.

(2) The import fee imposed under this subsection shall be paid by the person who imports the used tire to the department in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq., and any rules promulgated by the department.

(3)(A) The department shall deposit the proceeds from import fees imposed under this subsection into the State Treasury as special revenues to the credit of the following funds in the following percentages:

(i) Ninety-three percent (93%) to be deposited into the Used Tire Recycling Fund; and

(ii) Seven percent (7%) to be deposited into the Division of Environmental Quality Fee Trust Fund.

(B) As used in this section, "proceeds from import fees" means all moneys collected and received by the department under this subsection and interest and penalties on delinquent import fees.

(d)(1) There is imposed a commercial generator fee upon the transaction of a commercial generator selling or delivering a new tire as part of fleet services.

(2) The commercial generator fee shall be charged by the commercial generator to a person who in the ordinary course of business is an end user that removes used tires from the rim and replaces them with a new tire.

(3)(A) The commercial generator fee shall be imposed at the rate of three dollars (\$3.00) for each new tire that is sold or delivered to an end user that removes used tires from the rim and replaces them with a new tire.

(B) Except for the commercial generator fees imposed under this section, the commercial generator shall not charge any other fee to the end user.

(C)(i) For any used tires collected by a commercial generator, the first transportation of the used tire from the end user to the commercial generator's facility does not require a licensed tire transporter.

(ii) Any subsequent transportation of the used tire by the commercial generator for recycling or disposal requires a licensed tire transporter and shall be accounted for using the electronic uniform used tire manifest system.

(D) Each commercial generator shall register with the department and comply with all requirements related to collecting and reporting commercial generator fees.

(4) The commercial generator fees imposed under this section shall be added to the total cost charged by the commercial generator to the end user after all applicable gross receipts or compensating use taxes on the tires have been computed and shall be separately stated on the invoice or bill of sale.

(5)(A) The commercial generator fees imposed under this section shall be paid monthly to the secretary.

(B) However, the commercial generator may retain five percent (5%) of the commercial generator fee imposed under subdivision (d)(3)(A) of this section for administrative costs.

(6)(A) The commercial generator fees remitted in subdivision (d)(5)(A) of this section shall be collected by the secretary and shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(B)(i)(a) Each commercial generator shall file a return with the secretary on or before the twentieth of each month.

(b) The return shall show the total commercial generator fees collected for each tire sold or delivered to the end user during the preceding calendar month.

(c) The commercial generator shall remit the commercial generator fees with the return.

(ii) The secretary shall prescribe the form and contents of the return.

(7) The department shall deposit the proceeds from commercial generator fees collected under this subsection into the State Treasury as special revenues to the credit of the following funds in the following percentages:

(A) Ninety-three percent (93%) to be deposited into the Used Tire Recycling Fund; and

(B) Seven percent (7%) to be deposited into the Division of Environmental Quality Fee Trust Fund.

(8) As used in this section, "proceeds from commercial generator fees" means all moneys collected and received by the department under this section for commercial generator fees imposed under this subsection and interest and penalties on delinquent commercial generator fees.

(e)(1) It is the purpose and intent of this section that only one (1) of the following fees imposed under this section be charged for the transaction of removing a tire from a rim that is related to the sale of a replacement tire:

- (A) The rim removal fee; or
- (B) The commercial generator fee.

(2) If a person establishes that he or she has paid one (1) of the fees for a tire, the tire retailer or tire generator shall not charge an additional fee for that tire.

History. Acts 1991, No. 749, § 1; 1993, No. 1254, §§ 4, 5; 1995, No. 1315, § 3; 1997, No. 1292, § 3; 1999, No. 1164, §§ 113-115; 2003, No. 1304, §§ 2, 3; 2005, No. 1822, § 1; 2017, No. 317, § 1; 2019, No. 693, §§ 34-38; 2019, No. 910, §§ 2870-2876; 2019, No. 980, §§ 8-10.

Amendments. The 2019 amendment by No. 693 substituted “There is” for “Beginning on January 1, 2018, there shall be” in (a)(1) and (d)(1); rewrote (a)(3)(E) and (d)(3)(D) to delete obsolete language; and deleted “Beginning on January 1, 2018” from the beginning of (c)(1)(A).

The 2019 amendment by No. 910 substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (a)(5)(A); substituted “secretary” for “director” throughout (a)(6), (d)(5), and (d)(6); and substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (b)(1)(B), (c)(3)(A)(ii), and (d)(7)(B).

The 2019 amendment by No. 980 substituted “in the manner prescribed by the Department of Finance and Administration” for “using the electronic uniform used tire manifest system” in (a)(3)(D); in (a)(3)(E), deleted “who was not registered with the Department of Finance and Administration on August 1, 2017” following “retailer” and deleted “on or before December 1, 2017” following “Administration”; deleted “Beginning on January 1, 2018” from the beginning of (c)(1)(A); in (c)(1)(B), inserted “be registered with the Department of Finance and Administration and” and substituted “all requirements related to collecting and reporting import fees” for “the electronic uniform used tire manifest system”; in (d)(3)(D), deleted “who was not registered with the Department of Finance and Administration on August 1, 2017” following “generator” and deleted “on or before December 1, 2017” following “Administration”; and made stylistic changes.

8-9-405. Used tire program reimbursements.

(a) The Division of Environmental Quality shall establish the Used Tire Recycling and Accountability Program to:

- (1) Reimburse used tire programs for used tire recycling and disposal costs;
- (2) Incentivize recycling used tires collected under this subchapter;
- (3) Provide accountability for the disbursement of moneys to used tire programs; and
- (4) Otherwise improve the sustainability of used tire programs.

(b) To be eligible for reimbursements under this subchapter, a used tire program shall:

- (1) Be included in the solid waste management system under § 8-9-101 et seq. for each regional solid waste management district that the used tire program serves;
- (2) Have a used tire management plan for each regional solid waste management district that the used tire program serves to include

without limitation a schedule for identification and cleanup of waste tire sites that is updated until abatement of each identified waste tire site is completed;

(3) Be included in each regional solid waste management district's recycling program under § 8-9-203 that the used tire program serves;

(4) If operated by a political subdivision of the state or other public entity:

(A) Use the financial management system under § 14-21-101 et seq.;

(B) Comply with the county purchasing procedures under § 14-22-101 et seq.;

(C) Comply with the Arkansas County Accounting Law of 1973, § 14-25-101 et seq.; and

(D) Comply with the Local Fiscal Management Responsibility Act, § 14-77-101 et seq.;

(5) Be operated in compliance with this subchapter and all other laws and rules related to the administration of solid waste management systems and recycling programs in Arkansas;

(6) Encourage the voluntary establishment of tire collection centers at tire retailers, tire processing facilities, and solid waste disposal facilities for the deposit of tires generated in the state;

(7) Provide the division with business plan information required under § 8-9-408;

(8) Provide the division with all quarterly financial information and progress reports related to § 8-9-409;

(9)(A) Establish tire collection centers within each county served by the used tire program that accepts tires from tire retailers at no charge if the tire retailer establishes that it:

(i) Collects the rim removal fee imposed under § 8-9-404(a); and

(ii) Complies with the electronic uniform used tire manifest system under § 8-9-407.

(B) The tire collection centers under this subdivision (b)(9) may be at any one (1) or more of the following:

(i) A solid waste disposal facility;

(ii) A tire processing facility; or

(iii) A tire retailer; and

(10) Establish at least one (1) tire collection center within each county served by the used tire program.

(c) A used tire program that receives reimbursements under this section may:

(1) Contract with a tire processing facility that is approved by the Director of the Division of Environmental Quality;

(2) Remove or contract for the removal of tires from waste tire sites within the regional solid waste management district;

(3) Provide incentives for establishing privately operated tire collection centers for the public; and

(4) Form an inter-district used tire program.

(d) Moneys disbursed from the Used Tire Recycling Fund by the division for reimbursements under this section shall be:

(1) Distributed as provided under this section only to the used tire programs that comply with all applicable requirements in this subchapter related to the operation of used tire programs;

(2) Based on moneys available in the fund, the approved business plan rate, quarterly financial reports, and other documentation submitted by the used tire programs; and

(3) Made on a quarterly basis to the used tire programs.

(e)(1) Quarterly disbursements from the fund shall be paid each quarter from all available moneys collected and available for disbursement in that quarter.

(2) If there are insufficient moneys available in a quarter to make reimbursements for all submitted requests under subsection (f) of this section, the division shall calculate the total remaining funding available and allocate the moneys available for reimbursement to each used tire program based on a pro rata share of each used tire program's reimbursement request compared to the total moneys available.

(3)(A) The Arkansas Pollution Control and Ecology Commission may increase reimbursement rates if the director recommends an increase because of one (1) or more of the following:

(i) The relevant consumer price index for the preceding calendar year exceeded the consumer price index for calendar year 2018; or

(ii) The used tire programs have established an increase in operation costs.

(B) An increase to any reimbursement rate under subsection (f) of this section shall not exceed ten percent (10%) each calendar year.

(f) Based on data received from the electronic uniform used tire manifest system and quarterly reports, the funding for reimbursement for processing, recycling, or disposing of used tires at the approved business plan rate may be available from the fund for used tire programs that are in compliance with all applicable requirements of this subchapter.

(g) At the request of a used tire program that needs operational assistance or guidance on compliance with this subchapter, the division shall provide to the used tire program operational assistance or guidance on compliance with this subchapter.

(h) The division shall:

(1) Develop market opportunities for beneficial use of used tire material; and

(2) Educate the public on the Used Tire Recycling and Accountability Program.

History. Acts 1991, No. 749, § 1; 1995, No. 1315, § 4; 1997, No. 1292, § 4; 1999, No. 775, § 1; 2003, No. 1304, § 4; 2015, No. 840, § 3; 2017, No. 317, § 1; 2019, No. 315, § 689; 2019, No. 693, § 39; 2019, No. 910, §§ 2877-2883; 2019, No. 980, § 11.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "laws" in (b)(5).

The 2019 amendment by No. 693 deleted "By January 1, 2018" from the beginning of the introductory language of (a).

The 2019 amendment by No. 910 substituted "The Division of Environmental Quality" for "By January 1, 2018, the Arkansas Department of Environmental Quality" in the introductory language of

(a); substituted “division” for “department” throughout the section; and substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (c)(1).

The 2019 amendment by No. 980, in (d)(2), deleted “funding levels under subsection (c) of this section” following “fund” and deleted “funding priorities under sub-

section (f) of this section” following “rate”; rewrote (e)(1); in (e)(2), deleted “any funding level under” preceding “subsection (f)”, deleted “for the funding level” following the first occurrence of “available”, and deleted “for that funding level” following the second occurrence of “available”; and rewrote (f).

8-9-407. Electronic uniform used tire manifest system.

(a) The following entities shall use the electronic uniform used tire manifest system to accurately report all information related to the collection, transportation, distribution, and recycling or disposal of recyclable tires, waste tires, and used tires culled for resale:

- (1) Used tire programs;
- (2) Tire generators;
- (3) Tire collection centers;
- (4) Any person who:

(A) Removes a tire from the used tire program after it is collected;
or

- (B) Imports a tire under § 8-9-404(c); and
- (5) Commercial generators.

(b) If any of the persons or entities listed in subsection (a) of this section cannot use the electronic uniform used tire manifest system, the person or entity may submit to the used tire program an equivalent paper version which shall be entered into the electronic uniform used tire manifest system.

History. Acts 2017, No. 317, § 1; 2019, No. 693, § 40. deleted “Beginning on January 1, 2018” from the beginning of (a).

Amendments. The 2019 amendment

8-9-408. Accountability requirements for used tire programs — Business plans.

(a) On or before December 31, 2017, a used tire program that receives funding under this subchapter shall provide the Arkansas Department of Environmental Quality, now the Division of Environmental Quality, with a business plan that establishes its current operating plan and a proposed operating plan for calendar year 2018 and approved by its board.

(b) The minimum required information for the business plan is:

- (1) Current operation information to include:

(A) An explanation of debt and debt repayment obligations, including scheduled payments;

(B) A description of equipment used, including type, year manufactured, debt obligations related to the equipment, and whether it is leased or owned;

(C) An explanation of contract obligations including the amount, length, and scope of the contract;

(D) A description of how tires are managed, to include without limitation collection, transportation, and disposal or recycling;

(E) An explanation of costs, including the cost of tire collection centers, other collection facilities, trailers, transfer stations, processing, mileage, fuel, and personnel; and

(F) The number of tires currently on any property owned, leased, or otherwise controlled by each regional solid waste management district included in the used tire program; and

(2) Proposed operation costs for calendar year 2018, to include:

(A) A description of how tires will be managed, to include without limitation collection, storage, transportation, and disposal or recycling;

(B) Estimated cost of utilities, personnel, equipment, fees, leases, facilities, and any other costs related to the primary operation of the used tire program;

(C) The capital improvement and maintenance plan with estimated expenditures and costs;

(D) The estimated transportation cost including mileage, fuel, equipment, personnel, utilities, insurance, bonds, and fees;

(E) The locations of all tire collection centers; and

(F) The types of tires managed, to include recyclable tires, waste tires, and used tires culled for resale.

(c) A used tire program shall submit a revised business plan if there is a substantial change in the used tire program operations or if the division requests a revised business plan.

(d) A business plan or revised business plan submitted under this subchapter is effective after approval by the division or its designee.

(e)(1) The approved business plan or approved revised business plan shall include the approved business plan rates for each used tire program.

(2)(A) The division shall cooperate with the used tire programs and other entities to develop each used tire program's approved business plan rates for recyclable tires and waste tires.

(B) The approved business plan rates shall also use the size of a tire, including without limitation small tires, large tires, and extra-large tires, as a factor for determining the approved business plan rates.

History. Acts 2017, No. 317, § 1; 2019, No. 910, §§ 2884, 2885.

Amendments. The 2019 amendment inserted "now the Division of Environ-

mental Quality" in (a); and substituted "division" for "department" in (c), (d), and (e)(2)(A).

8-9-409. Performance and efficiency evaluations.

(a) The Division of Environmental Quality shall develop a system to evaluate and report the performance and efficiency of used tire programs and the Used Tire Recycling and Accountability Program.

(b) The evaluation and reporting system shall use the following performance indicators for each used tire program:

(1) The number of:

(A) Recyclable tires;

(B) Waste tires disposed in a landfill; and

(C) Waste tires disposed in a monofill;

(2) The number of reported waste tire sites located in the regional solid waste management districts that are included in the used tire program;

(3) Electronic uniform used tire manifest system compliance;

(4) Administrative expenses;

(5) Transportation expenses;

(6) Building, warehouse, and other facilities expenses;

(7) Revenue sources and the amount of revenue received from each source;

(8) The number, location, and type of tire collection centers;

(9) Any identified operational issues;

(10) The number of enforcement actions against the used tire program; and

(11) Any other performance indicators that are determined to be useful to evaluate performance and efficiency.

(c) The evaluations under this section shall be completed on a biennial basis for each used tire program.

History. Acts 2017, No. 317, § 1; 2019, No. 693, § 41; 2019, No. 910, § 2886.

Amendments. The 2019 amendment by No. 693 deleted “with the first evaluations to be completed on or before December 31, 2018” from the end of (c).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a).

8-9-410. Consolidation of used tire programs.

The General Assembly finds:

(1) The smaller the population and geographical area that a used tire program serves, the more unsustainable the used tire program is;

(2) In contrast, it has been noted nationally and within the state that used tire programs that serve a larger population and greater geographical area collect and process a large number of tires, are sustainable, and optimize the use of economies of scale;

(3) Before January 1, 2017, there were eleven (11) waste tire districts in the state; and

(4) It is in the best interest of the state for the used tire programs to combine to form inter-district used tire programs to operate in an efficient and financially sustainable manner.

History. Acts 2017, No. 317, § 1; 2019, No. 980, § 12. “Incentives to consolidate used” in the section heading; deleted the (a) designation; and deleted (b).

Amendments. The 2019 amendment substituted “Consolidation of used” for

8-9-411. Tire transporters — Licenses.

(a) A tire transporter shall meet the following requirements to perform or be compensated for any duties under this subchapter related to the administration and operation of a used tire program:

(1) Obtain for each vehicle a license;

(2) Obtain for each vehicle a tire transporter number provided by the Division of Environmental Quality used for the electronic uniform used tire manifest system;

(3) Provide proof that each vehicle has passed an annual safety inspection;

(4) Provide proof of financial responsibility for each vehicle and authorized driver;

(5) Provide a bond in the amount of ten thousand dollars (\$10,000);

(6) Establish that each authorized driver has completed training for the electronic uniform used tire manifest system; and

(7) Pay a fee of fifty dollars (\$50.00) for each vehicle that is licensed.

(b) For each tire transporter licensed under this section, the division shall assign a tire transporter number and include the tire transporter information in the electronic uniform used tire manifest system.

(c)(1) If a tire transporter is found to have not complied with this subchapter, the tire transporter’s license shall be suspended for three (3) months.

(2) If the license of a tire transporter is suspended more than one (1) time in three (3) years, the tire transporter’s license shall be revoked and the tire transporter is ineligible for a tire transporter license for three (3) years.

History. Acts 2017, No. 317, § 1; 2019, No. 693, § 42; 2019, No. 910, §§ 2887, 2888.

Amendments. The 2019 amendment by No. 693 deleted “For all tire transporters licensed on or after January 1, 2018” from the beginning of (a).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(2); and substituted “division” for “department” in (b).

8-9-414. Powers and duties of the Arkansas Pollution Control and Ecology Commission.

(a) The Arkansas Pollution Control and Ecology Commission shall promulgate rules to carry out the intent and purposes of this subchapter.

(b) The rules shall:

(1)(A) Except as provided under subdivision (b)(1)(B) of this section, provide for the administration of permits for tire processing facilities, tire collection centers, commercial generators, and any other person

or entity that collects, receives, processes, recycles, or disposes of used tires regulated under this subchapter with the maximum permit fee not to exceed two hundred fifty dollars (\$250) annually.

(B) The maximum permit fee under this subdivision (b)(1) shall not apply to tire transporters;

(2) Establish standards for tire processing facilities, tire collection centers, tire transporters, and beneficial use projects;

(3) Establish procedures for administering reimbursements to used tire programs under § 8-9-405;

(4) Unless otherwise provided by law, authorize the final disposition of waste tires at a permitted solid waste disposal facility if the waste tires have been cut into sufficiently small parts for proper disposal and in compliance with this subchapter and all other applicable provisions in this title;

(5) Establish procedures for administering the electronic uniform used tire manifest system;

(6) Establish accountability procedures for the sustainability of used tire programs operated under this subchapter; and

(7)(A) Establish the number of tires that each individual who is a resident of a regional solid waste management district may discard monthly without a fee.

(B) The maximum number of tires under this subdivision (b)(7) shall not be more than four (4) tires per month.

(c) The commission may:

(1) Develop an alternative tire transporter licensing program to be administered by used tire programs, regional solid waste management boards, or both;

(2) Promulgate rules that are necessary to administer the fees and reimbursement rates for services provided under this subchapter by the used tire programs; and

(3) Clarify and add definitions for sizes of tires using technical information and specifications.

(d)(1) The commission shall encourage the establishment of voluntary tire collection centers where used tires generated in Arkansas can be deposited.

(2) The voluntary tire collection centers shall include without limitation tire retailers, tire processing facilities, and solid waste disposal facilities.

(3) The voluntary tire collection centers shall not include the collection of tires generated by a tire manufacturer.

(e) The commission shall not prohibit the disposal of waste tires in landfills or monofills for three (3) years from August 1, 2017.

History. Acts 2017, No. 317, § 1; 2019, No. 315, §§ 690, 691.

Amendments. The 2019 amendment

substituted “rules” for “regulations” in (a), the introductory language of (b), and in (c)(2).

8-9-415. Permitting, licensing, inspections, procedures, enforcement, and penalties.

(a) A person who receives funding under this subchapter, tire collection centers, tire retailers, tire processing facilities, tire transporters, tire generators, commercial generators, used tires regulated under this subchapter, and waste tire sites are subject to:

(1) All provisions in § 8-1-101 et seq., § 8-1-201 et seq., § 8-1-301 et seq., § 8-4-101 et seq., and § 8-4-201 et seq., concerning permits, licensing, inspections, and procedures;

(2) Sections 8-6-204 and 8-6-205, 8-6-207(a)(6), and 8-9-105 concerning penalties and enforcement; and

(3) All applicable rules promulgated by the Arkansas Pollution Control and Ecology Commission.

(b) A used tire program is subject to penalties and enforcement under this subchapter for noncompliance with this subchapter to include without limitation:

(1) Failure to use the electronic uniform used tire manifest system;

(2) Failure to submit accurate information to the electronic uniform used tire manifest system;

(3) Failure to submit an approved business plan on or before July 1, 2018;

(4) Failure to submit a revised business plan as required under § 8-9-408(c);

(5) Failure to submit an approved revised business plan within three (3) months after submission; or

(6) Failure to provide documentation or reports required to be filed with the Division of Environmental Quality under this subchapter.

(c)(1) If a used tire program fails to submit a business plan that is approved by the Arkansas Department of Environmental Quality or the division on or before July 1, 2018, the used tire program and all regional solid waste management boards included in the used tire program on July 1, 2018, are:

(A) Ineligible to receive funding under this subchapter and from the Used Tire Recycling Fund;

(B) Prohibited from administering and operating a used tire program; and

(C) Prohibited from imposing any fees to support the administration and operation of a used tire program.

(2)(A) The division may designate a qualified entity to perform the duties related to the operation and administration of a used tire program deemed ineligible under subdivision (c)(1) of this section.

(B) A qualified entity that is designated to perform the duties related to the operation and administration of a used tire program under this subsection shall operate the used tire program in compliance with this subchapter.

(C) If the qualified entity performs the duties related to the operation and administration of the used tire program in compliance

with this subchapter, the qualified entity is eligible to receive funding under this subchapter and from the fund.

(d) In addition to any other penalty provided by law, a tire processing facility permit or a tire collection center permit shall be suspended or revoked for noncompliance with this subchapter.

History. Acts 2017, No. 317, § 1; 2019, No. 315, § 692; 2019, No. 910, §§ 2889-2891.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (a)(3).

The 2019 amendment by No. 910 substituted “Division of Environmental Qual-

ity” for “Arkansas Department of Environmental Quality” in (b)(6); substituted “Arkansas Department of Environmental Quality or the Division of Environmental Quality” for “department” in the introductory language of (c)(1); and substituted “division” for “department” in (c)(2)(A).

SUBCHAPTER 5 — ARKANSAS NEWSPAPER RECYCLING ADVISORY COMMITTEE

SECTION.
8-9-501 — 8-9-506. [Repealed.]

8-9-501 — 8-9-506. [Repealed.]

A.C.R.C. Notes. Acts 2019, No. 910, § 2892, amended § 8-9-502 to replace “Arkansas Department” with “Division” before “of Environmental Quality”. However, Acts 2019, No 976, § 1, specifically repealed § 8-9-502.

Publisher’s Notes. This subchapter, concerning the Arkansas Newspaper Recycling Advisory Committee, was repealed by Acts 2019, No. 976, § 1, effective July 24, 2019. The subchapter was derived from the following sources:

- 8-9-501. Acts 1993, No. 991, § 1; 2017, No. 1067, § 6.
- 8-9-502. Acts 1993, No. 991, § 2; 1995, No. 658, § 1; 1999, No. 1164, § 116; 2019, No. 910, § 2892.
- 8-9-503. Acts 1993, No. 991, § 3.
- 8-9-504. Acts 1993, No. 991, § 4.
- 8-9-505. Acts 1993, No. 991, § 5.
- 8-9-506. Acts 1993, No. 991, § 6; 2017, No. 1067, § 7.

SUBCHAPTER 6 — MERCURY SWITCH REMOVAL ACT OF 2005

- SECTION.
- 8-9-603. Definitions.
 - 8-9-604. Mercury minimization plan.
 - 8-9-605. Plan approval and implementation.
 - 8-9-606. Removal and proper management of mercury-added vehicle components.

- SECTION.
- 8-9-607. Annual reporting.
 - 8-9-608. Design for recycling.
 - 8-9-609. Rules — Authority of Arkansas Pollution Control and Ecology Commission.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that

these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Effi-

ciencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-9-603. Definitions.

As used in this subchapter:

(1) "Capture rate" means the annual removal, collection, and recovery of mercury switches as a percentage of the total number of mercury switches available for removal from end-of-life vehicles;

(2) [Repealed.]

(3) [Repealed.]

(4) "End-of-life vehicle" means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of recycling;

(5) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a new vehicle that utilizes mercury switches, or, in the case of an imported vehicle, the importer or domestic distributor of the vehicle;

(6) "Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from end-of-life vehicles that is prepared pursuant to § 8-9-604;

(7) "Mercury switch" means each mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly or part of an antilock braking system assembly installed in a vehicle. An antilock braking system assembly may contain more than one (1) mercury switch;

(8) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, or municipal, state, or federal government or agency or any other legal entity, however organized;

(9) "Scrap recycling facility" means a fixed location where machinery and equipment are used for processing and manufacturing scrap metal into prepared grades and whose principal products are scrap iron, scrap steel, or nonferrous metallic scrap for sale for remelting purposes;

(10) "Vehicle" means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than twelve thousand pounds (12,000 lbs.); and

(11) "Vehicle recycler" means an individual or entity engaged in the business of acquiring, dismantling, or destroying six (6) or more end-of-life vehicles in a calendar year for the primary purpose of the resale of their parts.

History. Acts 2005, No. 649, § 1; 2019, No. 910, § 2993.

Amendments. The 2019 amendment repealed (2) and (3).

8-9-604. Mercury minimization plan.

(a) Every manufacturer of vehicles sold within this state, individually or as part of a group, shall develop in consultation with the Division of Environmental Quality a mercury minimization plan prepared pursuant to this section and shall submit the mercury minimization plan to the Director of the Division of Environmental Quality for review and approval pursuant to § 8-9-605.

(b) The mercury minimization plan prepared and submitted pursuant to this section shall include the following at a minimum:

(1)(A) Information identifying the make, model, and year of vehicles, including current or anticipated future production models that may contain one (1) or more mercury switches, a description of the mercury switches, a system to mark vehicles to be processed for shredding or crushing to indicate the presence or absence of mercury switches, the location of these mercury switches, and the safe and environmentally sound methods for removal of mercury switches from end-of-life vehicles.

(B) To the extent a manufacturer is uncertain as to the content of a switch installed during the manufacture of a vehicle, the mercury minimization plan shall presume that the switch is a mercury switch;

(2) Educational materials to assist a vehicle recycler or a scrap recycling facility in undertaking a safe and environmentally sound method for the removal of the mercury switches from end-of-life vehicles, including information on the hazards related to mercury and the proper handling of mercury;

(3) A proposal for the method of storage or disposal of the mercury switches, including the method of packaging and shipping mercury switches to authorized recycling, storage, or disposal facilities;

(4) A proposal for the storage of mercury switches collected and recovered from end-of-life vehicles if environmentally appropriate management technologies are not available; and

(5) A plan for implementing and financing the system in accordance with subsection (d) of this section.

(c) To the extent practicable, a mercury minimization plan shall use the existing end-of-life vehicle recycling infrastructure. If the existing end-of-life vehicle recycling infrastructure is not used, the mercury minimization plan shall include the reasons for establishing a separate infrastructure.

(d)(1) A mercury minimization plan shall provide for the financing of the removal, collection, and recovery system for mercury switches installed in vehicles manufactured by the manufacturer and its predecessors and affiliates as provided in this subsection.

(2) These costs shall be borne by the manufacturers of vehicles sold in the state, ensuring that additional financial burdens are not placed on automobile dealers or businesses dealing with end-of-life vehicles. The manufacturers shall develop a method that ensures the prompt payment to vehicle recyclers, scrap recycling facilities, and the division

for costs associated with mercury switch removal and disposal. Costs shall include, but not be limited to, the following:

(A) A minimum of five dollars (\$5.00) for each mercury switch removed by a vehicle recycler pursuant to § 8-9-606(a) as partial compensation for the labor and other costs incurred by a vehicle recycler in the removal of the mercury switch;

(B) A minimum of five dollars (\$5.00) for each mercury switch removed by a scrap recycling facility pursuant to § 8-9-606(b) as partial compensation for the labor and other costs incurred by a scrap recycling facility in the removal of the mercury switch;

(C) One dollar (\$1.00) for each mercury switch removed by a vehicle recycler pursuant to § 8-9-606(a) or by a scrap recycling facility pursuant to § 8-9-606(b) as partial compensation to the division for costs incurred in administering and enforcing the provisions of this subchapter;

(D) Packaging in which to transport mercury switches to recycling, storage, or disposal facilities;

(E) Shipping of mercury switches to recycling, storage, or disposal facilities;

(F) Recycling, storage, or disposal of the mercury switches;

(G) The preparation and distribution to vehicle recyclers and scrap recycling facilities of the educational materials required pursuant to subdivision (b)(2) of this section; and

(H) Maintenance of all appropriate record-keeping systems.

(e) Every manufacturer of vehicles sold within the state, individually or as part of a group, shall provide to vehicle recyclers and scrap recycling facilities containers suitable for storing mercury switches until such time that vehicle recyclers and scrap recycling facilities can be reimbursed pursuant to this section.

(f) Manufacturers of vehicles sold within the state shall provide vehicle recyclers or scrap recycling facilities with reimbursement for each mercury switch in the amount established pursuant to this section regardless of when these mercury switches were removed from the vehicles if the vehicle recyclers or scrap recycling facilities maintain the records required by § 8-9-606.

(g) Manufacturers shall indemnify, defend, and hold harmless vehicle recyclers and scrap recycling facilities for any liabilities arising from the release of the mercury from the mercury-added components after the components are transferred to the manufacturer or its agent or contractor.

History. Acts 2005, No. 649, § 1; 2019, No. 693, §§ 43, 44; 2019, No. 910, § 2994.

Amendments. The 2019 amendment by No. 693 deleted “Within ninety (90) days after August 12, 2005” from the beginning of (a); and deleted “Within thirty

(30) days after August 12, 2005” from the beginning of (e).

The 2019 amendment by No. 910 inserted “now the Division of Environmental Quality” and “now the Director of the Division of Environmental Quality” in (a).

8-9-605. Plan approval and implementation.

(a)(1) Within one hundred twenty (120) days after receipt of a mercury minimization plan, the Director of the Arkansas Department of Environmental Quality, now the Director of the Division of Environmental Quality, shall approve, disapprove, or conditionally approve the entire mercury minimization plan. The director may solicit input from representatives of vehicle recyclers, scrap recycling facilities, and other stakeholders as the director deems appropriate.

(2)(A) If the entire mercury minimization plan is approved, the manufacturer shall begin implementation within thirty (30) days after receipt of approval or as otherwise agreed to by the director.

(B) If the entire mercury minimization plan is disapproved, the director shall inform the manufacturer as to the reasons for the disapproval. The manufacturer shall have thirty (30) days thereafter to submit a new mercury minimization plan.

(3)(A) The director may approve those parts of a mercury minimization plan that meet the requirements of § 8-9-604 and disapprove the parts that do not comply with the requirements of § 8-9-604.

(B) The manufacturer shall implement the approved parts of the mercury minimization plan within thirty (30) days after receipt of approval or as otherwise agreed to by the director and submit a revised mercury minimization plan for the disapproved parts within thirty (30) days after receipt of notification of the disapproval of the director.

(C) The director shall review and approve, conditionally approve, or disapprove a revised mercury minimization plan within thirty (30) days after receipt.

(4)(A) If at the conclusion of the time period of one hundred twenty (120) days after receipt of a mercury minimization plan the director has neither approved nor disapproved the mercury minimization plan pursuant to subdivision (a)(2)(A) or subdivision (a)(2)(B) of this section, the mercury minimization plan shall be considered to be conditionally approved.

(B) Subject to any modifications required by the director, a manufacturer shall implement a conditionally effective mercury minimization plan within thirty (30) days after receipt of approval or as otherwise agreed to by the director.

(b) [Repealed.]

(c) The director may review a mercury minimization plan approved pursuant to this section and recommend modifications to the plan at any time upon a finding that the approved mercury minimization plan is deficient or not accomplishing the purposes set out in this subchapter in any material respect.

History. Acts 2005, No. 649, § 1; 2019, No. 693, § 45; 2019, No. 910, § 2995.

Amendments. The 2019 amendment by No. 693 repealed (b).

The 2019 amendment by No. 910 inserted "now the Director of the Division of Environmental Quality" in (a)(1).

8-9-606. Removal and proper management of mercury-added vehicle components.

(a) Commencing thirty (30) days after the approval or conditional approval of a mercury minimization plan pursuant to § 8-9-605, a vehicle recycler that sells, gives, or otherwise conveys ownership of an end-of-life vehicle to a scrap recycling facility for recycling shall remove all mercury switches identified in the approved mercury minimization plan from the end-of-life vehicle prior to delivery to a scrap recycling facility, unless a mercury switch is inaccessible due to significant damage to the end-of-life vehicle in the area surrounding the location of the mercury switch, in which case the damage shall be noted on the normal business records of the vehicle recycler who delivered the end-of-life vehicle to the scrap recycling facility.

(b) Notwithstanding subsection (a) of this section, a scrap recycling facility may agree to accept an end-of-life vehicle containing mercury switches that has not been intentionally flattened, crushed, or baled, in which case the scrap recycling facility shall be responsible for removing the mercury switches identified in the mercury minimization plan approved pursuant to § 8-9-605 before the end-of-life vehicle is intentionally flattened, crushed, baled, or shredded.

(c)(1) A vehicle recycler or scrap recycling facility that removes mercury switches pursuant to subsection (a) or subsection (b) of this section shall maintain records documenting the number of:

- (A) Mercury switches collected;
- (B) End-of-life vehicles containing mercury switches;
- (C) End-of-life vehicles processed for recycling;
- (D) The makes and models of end-of-life vehicles from which mercury switches were removed; and
- (E) Mercury switches collected from each make.

(2) These records shall be made available for review by the Division of Environmental Quality upon the request of the division.

(d) No person shall represent that mercury switches have been removed from an end-of-life vehicle being sold, given, or otherwise conveyed for recycling if that person has not removed the mercury switches or arranged with another person to remove the mercury switches.

(e) Upon removal, mercury switches shall be collected, stored, transported, and otherwise handled in accordance with the:

- (1) Mercury minimization plan approved pursuant to § 8-9-605; and
- (2) Provisions of the rules concerning universal waste adopted by the division pursuant to the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

(f) No scrap recycling facility or other person that receives an intentionally flattened, crushed, or baled end-of-life vehicle shall be in

violation of this subchapter if a mercury switch is found in the end-of-life vehicle after its acquisition.

History. Acts 2005, No. 649, § 1; 2019, No. 315, § 693; 2019, No. 910, §§ 2996, 2997.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (e)(2).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (c)(2); and substituted “division” for “department” in (c)(2) and (e)(2).

8-9-607. Annual reporting.

(a) One (1) year after the implementation of a mercury minimization plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer subject to § 8-9-604 shall report individually or as part of a group to the Director of the Division of Environmental Quality concerning the implementation of the mercury minimization plan. The report shall include, but need not be limited to, the following:

(1) A detailed description and documentation of the capture rate achieved, with the goal of achieving a mercury switch capture rate of at least ninety percent (90%), consistent with the principle that mercury switches shall be recovered unless the mercury switch is inaccessible due to significant damage to the end-of-life vehicle in the area surrounding the location of the mercury switch;

(2) A description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its implementation in the event that a mercury switch capture rate of at least ninety percent (90%) is not achieved;

(3) The number of mercury switches collected, the number of end-of-life vehicles containing mercury switches, the number of end-of-life vehicles processed for recycling, and a description of how the mercury switches were managed; and

(4) A description of the amounts paid to cover the costs of implementing the mercury minimization plan.

(b) The director may discontinue the requirement for the annual report pursuant to subsection (a) of this section upon a finding that mercury switches in end-of-life vehicles manufactured by a particular manufacturer no longer pose a significant threat to the environment or to public health.

History. Acts 2005, No. 649, § 1; 2019, No. 910, § 2998.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” in the first sentence of (a).

8-9-608. Design for recycling.

(a) One (1) year after the implementation of a mercury minimization plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer subject to § 8-9-604 shall report individually or as part of a group to the Director of the Division of Environmental Quality

concerning the steps being taken by manufacturers to design vehicles and their components for recycling. The report shall include, but need not be limited to, the following:

(1) A list of all vehicle components that contain mercury included in the manufacturer's vehicles in each of the previous three (3) model years, the current model year, and the next upcoming model year;

(2) Design changes that each manufacturer has implemented or is implementing to reduce or eliminate from its vehicles all sources of mercury listed in compliance with subdivision (a)(1) of this section, the amount of any reductions, and the year in which mercury will be eliminated from each of the vehicle components listed in compliance with subdivision (a)(1) of this section;

(3) Policies that each manufacturer has implemented to ensure that its vehicles are designed to be recycled in a safe, cost effective, and environmentally sound manner using existing technologies and infrastructures;

(4) A listing of all:

(A) Complaints and reports that the manufacturer has received within the last twelve (12) months from vehicle recyclers, scrap recycling facilities, government entities, or organizations representing any of the persons; or

(B) Other facts and circumstances that have made the manufacturer aware that the manufacturer's vehicles contain vehicle components or are designed in such a way that presents environmental risks that make it uneconomical to recycle the vehicles or components; and

(5) The design or manufacturing changes that the manufacturer has implemented or is implementing to reduce or remove any environmental risks listed in compliance with subdivision (a)(4) of this section and the year in which design changes will eliminate the environmental risk listed in compliance with subdivision (a)(4) of this section.

(b) The Division of Environmental Quality may conduct hearings from time to time as the director deems appropriate to evaluate the steps manufacturers are taking to design for recycling and to recommend additional legislative action as may be appropriate in order to promote vehicle recycling for the purposes of the preservation of scarce resources and the safe and efficient reduction of solid waste.

History. Acts 2005, No. 649, § 1; 2019, No. 910, §§ 2999, 3000.

Amendments. The 2019 amendment substituted "Division of Environmental

Quality" for "Arkansas Department of Environmental Quality" in the first sentence of (a) and in (b).

8-9-609. Rules — Authority of Arkansas Pollution Control and Ecology Commission.

The Arkansas Pollution Control and Ecology Commission may adopt rules to effectuate and implement the purposes and intent of this

subchapter and the powers and duties of the Division of Environmental Quality.

History. Acts 2005, No. 649, § 1; 2019, No. 315, § 694; 2019, No. 910, § 3001.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in the section heading and in the text.

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality”.

CHAPTER 10

POLLUTION PREVENTION

- SUBCHAPTER.
- 2. ARKANSAS POLLUTION PREVENTION ACT.
 - 3. SPECIFIC POLLUTION PREVENTION MEASURES.

SUBCHAPTER 2 — ARKANSAS POLLUTION PREVENTION ACT

SECTION.

8-10-203. Definitions.

8-10-203. Definitions.

- As used in this subchapter, unless the context otherwise requires:
- (1) “Disposal” means the discharge, deposit, injection, dumping, spilling, leakage, or placing of any waste into or on any land or water in whatever manner so that such waste or any constituent thereof might enter the environment or be emitted into the air or discharged into any waters of the state, including groundwaters;
 - (2) “Generation” means the act or process of producing waste materials;
 - (3) “Generator” means any individual, business, government agency, or any other organization that generates waste;
 - (4) “Hazardous waste” means hazardous waste as defined by the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and rules issued pursuant thereto;
 - (5) “Person” means any individual, corporation, company, firm, partnership, association, trust, joint-stock company, state agency, government instrumentality or agency, institution, or county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized;
 - (6)(A) “Pollution prevention” means any action taken by industry, government, or individual consumers to conserve natural resources while providing and using needed products in a manner which prevents or reduces the generation, disposal, or release of pollutants to the environment.
 - (B) “Pollution prevention” does not include dewatering, dilution, or evaporation prior to handling, release, storage, treatment, or disposal of hazardous waste; and

(7) “Source reduction” or “waste minimization” means the reduction or elimination of waste at the source, usually within a manufacturing process, including process modification, feed stock substitutions, improvement in feed stock purity, housekeeping and management practices, increases in the efficiency of machinery, on-site closed-loop recycling, or any other action which demonstrably reduces the amount and toxicity of the waste exiting the production process.

History. Acts 1993, No. 1273, § 1; 2019, No. 315, § 695.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (4).

SUBCHAPTER 3 — SPECIFIC POLLUTION PREVENTION MEASURES

SECTION.

8-10-301. Sale of certain batteries prohibited — Disposal requirements — Definitions.

8-10-302. Construction of motor vehicle racing facility — Requirement — Definition.

SECTION.

8-10-303. Permit requirement — Definition.

8-10-304. Motor vehicle racing facilities in certain municipalities — Definition.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-10-301. Sale of certain batteries prohibited — Disposal requirements — Definitions.

(a) Alkaline manganese batteries manufactured on or after January 1, 1996, shall not be sold in this state if the alkaline manganese battery contains any intentionally introduced mercury, as distinguished from mercury which may be incidentally present in other materials, except, however, that the limitation on mercury content in alkaline manganese button cells shall be twenty-five milligrams (25 mg) of mercury per button cell.

(b) Zinc carbon batteries manufactured on or after January 1, 1994, shall not be sold in this state if the zinc carbon battery contains any intentionally introduced mercury.

(c)(1) It shall be illegal to sell consumer mercuric oxide button cell batteries in this state on or after January 1, 1994.

(2) As used in this subsection, “consumer mercuric oxide button cell batteries” means batteries which contain mercuric oxide electrodes, resemble buttons in size and shape, and are used in consumer products such as hearing aids.

(d)(1)(A) On or after January 1, 1994, no person shall dispose of mercuric oxide batteries in municipal solid waste or in medical waste.

(B) Mercuric oxide batteries are subject to disposal or recycling under the provisions of or pursuant to the provisions of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

(2) As used in this subsection, “mercuric oxide batteries” means batteries containing mercuric oxide electrodes, except that consumer mercuric oxide button cell batteries are excluded from the definition.

(e) The Arkansas Pollution Control and Ecology Commission may promulgate, modify, or repeal rules as necessary or appropriate to implement or effectuate the purpose and intent of this section.

(f) Any person violating any provision of this section or of any rule or order issued pursuant to this section shall be subject to the same penalty and enforcement provisions as are contained in § 8-6-204.

History. Acts 1993, No. 952, § 1; 2019, No. 315, § 696. deleted “or regulations” following “rules” in (e) and made a similar change in (f).

Amendments. The 2019 amendment

8-10-302. Construction of motor vehicle racing facility — Requirement — Definition.

(a)(1) Due to the noise, air pollution, and traffic congestion caused by motor vehicle racing facilities, no motor vehicle racing facility may be constructed in this state after passage of this act without the consent of at least seventy-five percent (75%) of the property owners and seventy-five percent (75%) of the registered voters within three (3) miles of the outside boundary of the proposed motor vehicle racing facility.

(2)(A) Such consent shall be accomplished by signing petitions that shall be filed with the city clerk if the motor vehicle racing facility is to be located within the boundaries of any city or town or with the county clerk if the motor vehicle racing facility is to be located wholly or partially outside the boundaries of any city or town.

(B) The petitions shall indicate:

(i) The name;

(ii) The residence address or, if a nonresident property owner, the address or legal description of the property located within the three-mile area; and

(iii) The date of the signature.

(C)(i) The petitions must be verified pursuant to § 7-9-109.

(ii) Signatures shall become invalid sixty (60) days after signing.

(iii) It shall be the duty of the county clerk or city clerk, as the case may be, to determine the sufficiency of the signatures and to certify the sufficiency or insufficiency of the signatures in writing to the Division of Environmental Quality.

(b) As used in this section, “motor vehicle racing facility” means any facility designed and used for competitive racing by automobiles or trucks that are modified for racing.

History. Acts 1995, No. 1191, § 40; 1997, No. 551, § 2; 1997, No. 1015, § 35; 1999, No. 674, § 1; 2005, No. 1409, § 1; 2019, No. 910, § 3002.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(2)(C)(iii).

8-10-303. Permit requirement — Definition.

(a)(1)(A) Due to the noise pollution and air pollution from the racing vehicles and traffic congestion caused by motor vehicle racing facilities, no motor vehicle racing facility shall be constructed in this state after passage of this section without the consent of at least seventy-five percent (75%) of the property owners and seventy-five percent (75%) of the registered voters within three (3) miles of the outside boundary of the proposed motor vehicle racing facility and without an annual permit issued by the Division of Environmental Quality.

(B) The consent shall be required for the initial annual permit only.

(2)(A) Consent shall be accomplished by signing petitions which shall be filed with the city clerk if the motor vehicle racing facility is to be located within the boundaries of any city or town or with the county clerk if the motor vehicle racing facility is to be located wholly or partially outside the boundaries of any city or town.

(B) The petitions shall indicate:

(i) The name;

(ii) The residence address or, if a nonresident property owner, the address or legal description of the property located within the three-mile area; and

(iii) The date of the signature.

(C)(i) The petitions must be verified pursuant to § 7-9-109.

(ii) Signatures shall become invalid sixty (60) days after signing.

(iii) It shall be the duty of the county clerk or city clerk, as the case may be, to determine the sufficiency of the signatures and to certify the sufficiency or insufficiency of the signatures in writing to the division.

(3)(A)(i) Once the sufficiency of the petitions is determined, the persons or entity proposing and constructing a motor vehicle racing facility after August 1, 1997, shall seek the approval of and issuance of an annual permit from the division. The division’s approval shall be sought by filing a permit application with the division.

(ii) Initial permit applications for new motor vehicle racing facilities to be constructed shall have attached a written proposal for the motor vehicle racing facility containing the substance of the proposed facility, including:

(a) A description of the types of motor vehicles proposed for racing at the motor vehicle racing facility;

(b) The maximum projected noise level of the racing vehicles;

(c) A description of the kinds of races and the types of buildings, stands, or other physical plant proposed for the motor vehicle racing facility;

(d) Estimates of traffic counts and numbers of spectators; and

(e) Any other relevant permit information as may be determined necessary for the permit application by the division.

(B) For the initial permit application for new motor vehicle racing facilities to be constructed, the division shall conduct a public hearing on the proposed motor vehicle racing facility. The division shall set a date for the public hearing to be held on the proposed motor vehicle racing facility permit which shall not be less than thirty (30) days after the filing of the initial permit application. The hearing under this subdivision (a)(3)(B) for the initial permit may be adjourned and continued if necessary. In its discretion, the division may hold public hearings for the renewal of any permits as is necessary. Any interested persons may appear and contest the granting of the approval or renewal of the motor vehicle racing facility permit. Affidavits in support of or against the proposed motor vehicle racing facility or a permit renewal, which may be prepared and submitted, shall be examined by the division.

(C) After the hearing for the initial permit or upon application for the renewal of its annual permit, if the division shall be satisfied that the benefits of the motor vehicle racing facility are sustained by proof and outweigh its impact by the noise, air pollution, and traffic congestion caused by motor vehicle racing facilities, then the division shall grant the initial permit approving the proposed motor vehicle racing facility or shall renew approval to the permitted or existing motor vehicle racing facility. Renewal of an annual permit may also be denied if:

(i) The motor vehicle racing facility is determined to be in violation of any standards under which the permit was issued;

(ii) The motor vehicle racing facility is constructed or is being operated in a manner that is materially different than was represented during the petition process; or

(iii) Fraud, misrepresentation, or false statement of facts was used to obtain signatures for the petition process.

(D) If any material changes, additions, or improvements are made to the motor vehicle racing facility, the permit shall be amended accordingly, and the division may reconsider the approval of the permit.

(E) The Arkansas Pollution Control and Ecology Commission shall have the authority to promulgate all necessary rules to implement this section, including the authority to set a permit fee to recover the cost of issuing the permit.

(b) As used in this section, "motor vehicle racing facility" means any facility designed and used for competitive racing by automobiles or trucks that are modified for racing.

(c) Within one (1) year of August 1, 1999, each motor vehicle racing facility constructed in Arkansas after January 1, 1995, shall apply for and shall receive an initial annual permit to operate its motor vehicle racing facility. Thereafter, upon the annual renewal date for its permit, the motor vehicle racing facility constructed after January 1, 1995, shall apply annually for renewal of its permit.

History. Acts 1997, No. 551, § 1; 1999, No. 674, § 2; 1999, No. 1164, §§ 117, 118; 2005, No. 1409, § 2; 2019, No. 315, § 697; 2019, No. 910, §§ 3003-3007.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (a)(3)(E).

The 2019 amendment by No. 910 substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a)(1)(A); and substituted “division” for “department” throughout the rest of the section.

8-10-304. Motor vehicle racing facilities in certain municipalities — Definition.

(a) Sections 8-10-302 and 8-10-303 do not apply to any motor vehicle racing facilities located in a county having a population between eighty thousand (80,000) and ninety thousand (90,000) according to the 1990 Federal Decennial Census and that are:

- (1) South of a navigable waterway that traverses the state; or
- (2) More than two (2) miles from an interstate highway, public or private school, or church facility in place at the time of the original permit application.

(b)(1)(A) A person or entity proposing and constructing a motor vehicle racing facility under subsection (a) of this section shall seek the approval of and issuance of an annual permit from the Division of Environmental Quality.

(B) The division’s approval shall be sought by filing a permit application with the division, which shall contain a written proposal for the motor vehicle racing facility containing the substance of the proposed facility, including:

- (i) A description of the types of motor vehicles proposed for racing at the motor vehicle racing facility;
- (ii) The maximum projected noise level of the racing vehicles;
- (iii) A description of the kinds of races and the types of buildings, stands, or other physical plants proposed for the motor vehicle racing facility;
- (iv) Estimates of traffic counts and numbers of spectators; and
- (v) Any other relevant permit information as may be determined necessary for the permit application by the division.

(2)(A)(i) For the initial permit application for new motor vehicle racing facilities to be constructed, the division shall conduct a public hearing on the proposed motor vehicle racing facility.

(ii) The division shall set a date for the public hearing to be held on the proposed motor vehicle racing facility permit which shall not be fewer than thirty (30) days after the filing of the initial permit application.

(iii) The hearing under this subdivision (b)(2) for the initial permit may be adjourned and continued if necessary.

(B)(i) The division, in its discretion, may hold public hearings for the renewal of any permits as is necessary.

(ii) Any interested persons may appear and contest the granting of the approval or renewal of the motor vehicle racing facility permit.

(iii) Affidavits in support of or against the proposed motor vehicle racing facility or a permit renewal, which may be prepared and submitted, shall be examined by the division.

(3) After the hearing for the initial permit or upon application for the renewal of its annual permit, if the division is satisfied that the benefits of the motor vehicle racing facility are sustained by proof and outweigh its impact by the noise, air pollution, and traffic congestion caused by motor vehicle racing facilities, then the division shall grant the initial permit approving the proposed motor vehicle racing facility or shall renew approval to the permitted or existing motor vehicle racing facility.

(4) Renewal of an annual permit may also be denied if:

(A) The motor vehicle racing facility is determined to be in violation of any standards under which the permit was issued; or

(B) The motor vehicle racing facility is constructed or is being operated in a manner that is materially different than was represented during the initial application process.

(5) If any material changes, additions, or improvements are made to the motor vehicle racing facility, the permit shall be amended accordingly, and the division may reconsider the approval of the permit.

(6) The Arkansas Pollution Control and Ecology Commission shall have the authority to promulgate any and all necessary rules to implement this section, including the authority to set a permit fee to recover the cost of issuing the permit.

(c) Each motor vehicle racing facility constructed in an area under this section that applies for and receives an initial annual permit to operate its motor vehicle racing facility shall thereafter apply annually for renewal of its permit.

(d) As used in this section, "motor vehicle racing facility" means any facility designed and used for competitive racing by automobiles or trucks that are modified for racing.

(e) Due to the noise pollution and air pollution from the racing vehicles and traffic congestion caused by motor vehicle racing facilities, no motor vehicle racing facility shall be permitted or constructed under this section within one (1) mile of the boundary of another county.

History. Acts 2001, No. 1413, § 1; 2009, No. 1287, §§ 1-3; 2019, No. 315, § 698; 2019, No. 910, §§ 3008-3014.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b)(6).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b)(1)(A); and substituted "division" for "department" throughout (b).

CHAPTER 11

ARKANSAS ENVIRONMENTAL REGULATORY FLEXIBILITY ACT

SECTION.

8-11-103. Regulatory flexibility.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-11-103. Regulatory flexibility.

(a)(1) The Division of Environmental Quality, by order of the Director of the Division of Environmental Quality consistent with the purposes of this chapter, may approve requests which allow an applicant to use alternative methods to comply with an Arkansas Pollution Control and Ecology Commission rule regarding the control or abatement of pollution.

(2) However, the applicant must propose to control or abate pollution by an alternative method, provided the alternative method is:

(A) Quantifiable, measurable, and enforceable;

(B) At least as protective of the environment and the public health as the method prescribed by the requirement or commission rule that would otherwise apply; and

(C) Consistent with federal law.

(b) As a part of the approval process, the director shall provide for public notice and for public participation in considering requests under this section.

(c) The director's order must provide a specific description of the alternative method and must condition any approval on compliance with the method as the order prescribes.

(d) The division may establish a reasonable fee for applications under this section.

(e) A violation of an order issued under this section is punishable as if it were a violation of the previously effective means of compliance.

History. Acts 1999, No. 500, § 1; 2019, No. 910, §§ 3015, 3016.

Amendments. The 2019 amendment substituted “Division of Environmental

Quality” for “Arkansas Department of Environmental Quality” twice in (a)(1); and substituted “division” for “department” in (d).

CHAPTER 12

NATURAL RESOURCES DAMAGES TRUST FUND ACT

SECTION.

8-12-104. Natural Resources Damages Advisory Board.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019”.

8-12-104. Natural Resources Damages Advisory Board.

- (a) There is hereby created and established a Natural Resources Damages Advisory Board.
- (b) The board shall be composed of seven (7) members:

(1) One (1) member shall be a representative from the Arkansas Farm Bureau Federation;

(2) One (1) member shall be a representative from the Arkansas Natural Resources Commission;

(3) One (1) member shall be a representative from the Arkansas Forestry Commission;

(4) One (1) member shall be a representative from the Division of Environmental Quality;

(5) One (1) member shall be a representative from the Arkansas State Game and Fish Commission;

(6) One (1) member shall be a representative of the Division of Arkansas Heritage; and

(7) One (1) member shall be a representative of the Attorney General’s office.
- (c) Members of the board shall serve without compensation.
- (d) The board shall have the following powers and duties:

(1) To develop projects for the restoration, rehabilitation, replacement, and acquisition of natural resources;

- (2) To request proposals for natural resource-related projects;
- (3) To review and evaluate proposals for natural resource-related projects;
- (4) To select projects for the restoration, rehabilitation, replacement, and acquisition of natural resources; and
- (5) To approve payments from the Natural Resources Damages Trust Fund for projects and other activities relating to the restoration, rehabilitation, replacement, and acquisition of natural resources.

History. Acts 1999, No. 895, § 1; 2019, No. 910, § 3017. substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (b)(4).

Amendments. The 2019 amendment

CHAPTER 13

MANAGEMENT ORGANIZATION

SECTION.

8-13-101. Purpose.

8-13-102. Authority to adopt alternative organization.

SECTION.

8-13-103. Requirements for comprehensive analysis and strategic planning.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

8-13-101. Purpose.

It is recognized that:

(1) The improvement of the environment and the management of environmental concerns within the State of Arkansas are matters of interest to all citizens of this state;

(2) Environmental protection and improvement could be enhanced by authorizing the Director of the Division of Environmental Quality to design and establish a management organization which incorporates specific goals for environmental protection and uses environmental indicators to measure agency performance; and

(3) The director should execute a management process which:

(A) Creates an integrated agency information system;

(B) Organizes the Division of Environmental Quality according to business function;

(C) Utilizes environmental indicators to measure progress in protecting and enhancing the environment;

(D) Employs a collaborative public involvement process to define the environmental indicators to be used to measure environmental enhancement; and

(E) Establishes a performance-based financial management system that links the funding of agency activities to environmental results.

History. Acts 1999, No. 1316, § 1; substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (2) and (3)(B).
2019, No. 910, §§ 3018, 3019.

Amendments. The 2019 amendment

8-13-102. Authority to adopt alternative organization.

(a) The Director of the Division of Environmental Quality, with the advice and consent of the Secretary of the Department of Energy and Environment, may establish any number of divisions, offices, or units for the conduct of environmental affairs of the state and may prescribe the functions and duties of each division, office, or unit.

(b) Provided, however, that:

(1) All functions and duties prescribed by a grant agreement with an entity of the United States Government shall be maintained for the duration of the grant agreement;

(2)(A) This section does not limit any provision of state law directing or requiring the Division of Environmental Quality to carry out any function or provide any service.

(B) However, nothing in this section shall be construed to prevent the reassignment of functions or services assigned by state law where reassignment does not alter the obligation of the Division of Environmental Quality to continue providing such function or service;

(3) Such reorganization shall be based on a comprehensive analysis of all of the functions and duties administered by the Division of Environmental Quality and the development of a ten-year strategic plan of Division of Environmental Quality operations; and

(4) The conduct of such comprehensive analysis and the development of a strategic plan shall be financed by an appropriation or authorization of the General Assembly for these specific purposes.

History. Acts 1999, No. 1316, § 1; in (a), substituted “Secretary of the Department of Energy and Environment” for “Governor” and inserted “offices, or units” and “office, or unit”; and substituted “division” for “department” in (b)(2)(B) and twice in (b)(3).
2019, No. 910, §§ 3020, 3021.

Amendments. The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (a) and (b)(2)(A);

8-13-103. Requirements for comprehensive analysis and strategic planning.

(a) Any reorganization of the functions and duties for the conduct of environmental affairs through the provisions of this chapter shall be based on a comprehensive analysis of the existing operations of the Division of Environmental Quality and the development of a ten-year strategic plan for Division of Environmental Quality operations. Such strategic plan shall be reviewed and updated on an annual basis and shall be made available for public review through formal notice.

(b) The comprehensive analysis of each division, function, and duty shall consist of the following requirements:

(1) A comprehensive analysis of each existing division, function, and duty performed by the Division of Environmental Quality in providing environmental services; and

(2) A comprehensive comparative analysis of the functions and duties to be performed through the proposed alternative organization with regard to improved efficiency, effectiveness, responsiveness, and accountability to the people.

(c)(1) The strategic plan shall outline a management organization for the Division of Environmental Quality that promotes environmental protection and enhancement.

(2) Such management organization shall consist of the following requirements:

(A) To establish an integrated agency information system that:

(i) Ensures compatibility between state standards and facility identification and location data standards established by the United States Environmental Protection Agency;

(ii) Reduces reporting and record-keeping burdens on industry;

(iii) Establishes a public participation process to define and adopt reporting and data management reforms;

(iv) Measures improvements in waste reduction recycling of waste materials, conservation and reuse of resources, and pollution prevention; and

(v) Expands public access to environmental performance information;

(B)(i) To institute environmental performance indicators to measure progress in protecting and enhancing the environment.

(ii) Such indicators shall emphasize waste reduction, recycling of waste materials, conservation and reuse of materials, and pollution prevention, and shall be formulated using numeric goals and expressed in plain language terms.

(iii) Such indicators shall be developed by a work group appointed by the Director of the Division of Environmental Quality consisting of representatives of the Division of Environmental Quality working in collaboration with representatives from state and federal agencies, city and county officials, nonprofit organizations, minority groups, industry, colleges and universities, civic groups, and other stakeholders in environmental affairs;

(C) To organize the Division of Environmental Quality according to business functions and duties;

(D) To establish a performance-based financial management system that links expenditures within divisions, functions, and duties to environmental protection and enhancement; and

(E) To embody the above elements into a reorganization plan which provides for the scheduling of any transfer of functions and duties, acquisition of equipment, development of procedures, programming, records, documents, properties, assets, funds, liabilities, and bonding resulting from the proposed changes.

History. Acts 1999, No. 1316, § 1; Quality" for "Arkansas Department of Environmental Quality" in (a) and 2019, No. 910, §§ 3022-3026.

Amendments. The 2019 amendment substituted "Division of Environmental (c)(2)(B)(iii); and substituted "division" for "department" throughout the section.

CHAPTER 14

SHIELDED OUTDOOR LIGHTING ACT

SECTION.

8-14-104. Shielding — Prohibitions — Exemptions.

8-14-104. Shielding — Prohibitions — Exemptions.

(a)(1)(A) No public funds shall be used to install an outdoor lighting fixture unless it is shielded.

(B) Subdivision (a)(1)(A) of this section does not apply to any municipality or county if the governing body of the municipality or county determines by ordinance or to a municipally owned utility if the municipal employee responsible for procurement determines that the cost of acquiring a shielded outdoor lighting fixture will be prohibitive after comparing:

(i) The cost of the fixtures; and

(ii) The projected energy cost of the operation of the fixtures.

(2) The Division of Environmental Quality shall promulgate rules prohibiting any person or entity from knowingly placing or disposing of the bulb or tube portion of an electric lighting device containing hazardous levels of mercury in a landfill if:

(A) The electric lighting device contains more than two-tenths milligram per liter (0.2 mg/l) of leachable mercury as measured by the Toxicity Characteristic Leaching Procedure as set out in United States Environmental Protection Agency Test Method 1311; and

(B) Adequate facilities exist for the public to properly dispose of the electric lighting device described in subdivision (a)(2)(A) of this section.

(3)(A) Each electric public utility shall offer a shielded lighting service option.

(B) Each electric public utility shall file an application with the Arkansas Public Service Commission to establish a schedule of rates

and charges for the provision of a shielded lighting service option to the utility's customers.

(C) The commission shall require each electric public utility to inform its customers of the availability of the shielded lighting service.

(b) This chapter does not apply to acquisitions of:

(1) Incandescent outdoor lighting fixtures of one hundred fifty watts (150 W) or less or other light sources of seventy watts (70 W) or less;

(2) Outdoor lighting fixtures on advertisement signs on interstate or federal primary highways;

(3)(A) Outdoor lighting fixtures existing and legally installed before August 12, 2005.

(B) However, if an existing outdoor lighting fixture exempted from this chapter under subdivision (b)(3)(A) of this section needs to be replaced, the acquisition of the replacement outdoor lighting fixture shall be subject to the provisions of this chapter;

(4) Navigational lighting systems at airports or other lighting necessary for aircraft safety; and

(5) Outdoor lighting fixtures that are necessary for worker safety at farms, ranches, dairies, or feedlots or industrial, mining, or oil and gas facilities.

(c) This chapter does not apply to outdoor lighting fixtures maintained or installed by:

(1) A public school district;

(2) A correctional facility;

(3) A juvenile detention facility;

(4) An adult detention facility;

(5) A mental health facility; or

(6) A state-supported institution of higher education.

History. Acts 2005, No. 1963, § 1; 2006 (1st Ex. Sess.), No. 11, § 1; 2007, No. 124, § 1; 2007, No. 452, § 1; 2007, No. 470, § 1; 2019, No. 315, §§ 699, 700; 2019, No. 693, § 46.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in the introductory language of (a)(2).

The 2019 amendment by No. 693 deleted the former introductory language of (a); substituted "does not" for "shall not" in (a)(1)(B); deleted "after January 1, 2008" following "landfill" in the introductory language of (a)(2); deleted "Not later than January 1, 2006" from the beginning of (a)(3)(B); and made stylistic changes.

